

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 MARIO RODRIGUEZ
11 April 16, 2018, and April 17, 2018
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1 THE COURT: All right. Ms. Armijo, does
2 the Government have its next witness or evidence?

3 MS. ARMIJO: Yes, Your Honor. Mario
4 Rodriguez.

5 THE COURT: All right. Mr. Rodriguez, if
6 you'll come up and stand next to the witness box,
7 before you're seated, my courtroom deputy,
8 Ms. Bevel, will swear you in.

9 MARIO RODRIGUEZ,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Please be seated and state
13 your name for the record.

14 MR. SINDEL: Your Honor, may I --

15 THE COURT: You may position yourself.

16 THE WITNESS: Mario Rodriguez.

17 MS. TORRACO: Before we start, can we
18 approach, please?

19 THE COURT: You may.

20 (The following proceedings were held at
21 the bench.)

22 MS. TORRACO: Can we take that exhibit
23 down?

24 MS. ARMIJO: That's not us.

25 THE COURT: I think it's the defendants'

1 exhibit.

2 MS. ARMIJO: That's not us.

3 THE COURT: You'll have to tell Ms.

4 Gilbert to take it down.

5 MS. ARMIJO: That's not us.

6 (The following proceedings were held in
7 open court.)

8 THE COURT: All right, Mr. Rodriguez,
9 Ms. Armijo?

10 MS. ARMIJO: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. ARMIJO:

13 Q. Can you please state your name, please?

14 A. Mario Rodriguez.

15 Q. And Mr. Rodriguez, how old are you?

16 A. I'm 33.

17 Q. And where were you -- where did you grow
18 up?

19 A. In Silver City, New Mexico.

20 Q. And when you were growing up, were you a
21 member of a street gang?

22 A. Yes, ma'am.

23 Q. What street gang?

24 A. East Side Folks Street Gang.

25 Q. East Side Folks Street Gang?

1 A. Yes, ma'am.

2 Q. Okay. And are you familiar with Silver
3 City, then, as far as gangs?

4 A. Yes, ma'am. I lived there since I was six
5 years old.

6 Q. And is East Side Folks the only street
7 gang there?

8 A. No, ma'am.

9 Q. What other street gang is there?

10 A. The two dominant street gangs is China
11 Town Locos and East Side Folks.

12 Q. So the China Town Locos; is that correct?

13 A. Yes, ma'am.

14 Q. And so you are an East Side Folk --

15 A. Yes, ma'am.

16 Q. -- member?

17 Now, how old were you when you were sent
18 to the -- let me back up. Did you have any issues
19 with the law when you were a juvenile?

20 A. Yes.

21 Q. And at some point when you were an adult,
22 did you actually end up being sent to the New Mexico
23 Corrections Department?

24 A. Yes, ma'am.

25 Q. How old were you when you were originally

1 sent to Corrections?

2 A. I was picked up when I was 18. Then I
3 went to the Corrections at 19.

4 MS. ARMIJO: Okay. At this time I'd move
5 for the admission of 607, which is his pen pack for
6 Mr. Rodriguez.

7 THE COURT: Any objection from the
8 defendants? Not seeing or hearing any objection,
9 Government's Exhibit 607 will be admitted into
10 evidence.

11 (Government Exhibit 607 admitted.)

12 BY MS. ARMIJO:

13 Q. All right. Mr. Rodriguez, can you
14 remember what crime it was that you initially were
15 sentenced to the Department of Corrections for, or
16 Corrections Department?

17 A. The initial crime I was sentenced to or
18 the initial crime I was picked up for?

19 Q. The initial crime -- well, that's a very
20 good question. Let me back up further. I'm sorry.

21 How many felony convictions do you think
22 you have?

23 A. About six or seven.

24 Q. And are most of those committed on the
25 streets, or do you have some that were committed

1 once you were in custody?

2 A. Every single one of my convictions is
3 while in custody.

4 Q. Okay. So when you were first -- so every
5 single one of your convictions involves activity of
6 yours while you were incarcerated?

7 A. Yes, ma'am, in the Grant County Detention
8 Center.

9 Q. Grant County Detention Center. Were you
10 housed there at some point?

11 A. Yes.

12 Q. How old were you?

13 A. I was 18.

14 Q. And what were you being housed there for?

15 A. For aggravated battery with a deadly
16 weapon.

17 Q. And was that charge that you were actually
18 housed on eventually dismissed?

19 A. Yes, ma'am.

20 Q. Did you pick up new charges while you were
21 there at the detention center?

22 A. I did.

23 Q. And what did those charges involve?

24 A. The first one I picked up was an escape.
25 The second one was kidnapping and two criminal

1 sexual penetration charges on an inmate, and another
2 escape, and battery on a police officer.

3 Q. Okay.

4 A. I picked up more while in prison.

5 Q. Okay. So the first starting at the
6 detention center?

7 A. Right.

8 Q. I guess one of those was an escape?

9 A. Right.

10 Q. Did you actually escape from the facility?

11 A. I escaped while -- I guess you can call it
12 a walk-away. I escaped while on work detail.

13 Q. Okay. And that's considered an escape in
14 the State of New Mexico?

15 A. Yes. It's a mandatory 18 months in
16 prison.

17 Q. So then you got picked up from that
18 escape?

19 A. Right.

20 Q. So you're back in the detention center;
21 correct?

22 A. Detention center.

23 Q. Just so we're clear, the detention center
24 is not part of the Corrections Department.

25 A. No, ma'am.

1 Q. This is somewhere where you were awaiting
2 the resolution of some charges. Is that a good way
3 to say it?

4 A. That's correct.

5 Q. So then you said you picked up some more
6 charges; correct?

7 A. Right.

8 Q. And I believe you mentioned kidnapping and
9 criminal sexual penetration?

10 A. Two counts.

11 Q. Okay. And what did that involve?

12 A. It involved -- there was an inmate that
13 was housed with us that was a little weaker than any
14 of the guys there. Went to roll him out, and he had
15 money on his books, so he was kept, I guess,
16 hostage, and beat and assaulted. And eventually he
17 was sodomized with a hot sauce bottle, and held
18 against his will.

19 Q. Okay. Who did the -- who sodomized him?

20 A. My co-defendant, Joseph Chavez.

21 Q. All right. So did you actually physically
22 do any of the criminal sexual penetration part?

23 A. No. My crimes led to the commission of
24 that crime.

25 Q. Okay. And when you say "we," I believe

1 you said the term "roll, rolled out"?

2 A. Roll him out, make him go into protective
3 custody.

4 Q. Okay. What do you mean by making him go
5 into protective custody?

6 A. Say an inmate shows up, and he's weaker,
7 or he doesn't fit the profile to fit in with us, and
8 we don't want him in the tank. It could be a guy
9 with bad charges, could be an enemy, could be
10 someone that's scared. We just tell them: "You've
11 got to leave or you're going to be physically
12 assaulted." And either he leaves or you physically
13 assault him and he's left beat up and they move him
14 out.

15 Q. So is that what happened in this case as
16 far as that person?

17 A. It was going to happen, and then one of
18 the guys that was getting his property to leave
19 found the receipt for, I think, three or four
20 hundred bucks, and decided to keep them to spend his
21 money on canteen.

22 Q. Now, then, you mentioned -- what else, as
23 far as picking up charges in the detention center,
24 did you get?

25 A. I escaped again after that.

1 Q. Okay. How did you escape after that?

2 A. I told the COs that I swallowed a razor
3 blade. I swallowed a little piece of metal from the
4 broom. And they took me to the hospital. They
5 housed me. The X-ray machine came up that I had
6 metal in my stomach. They housed me. And while I
7 was taking a shower, the CO wasn't there to put
8 shackles on me. I looked around the corner, I seen
9 the CO, and I took off running out of the hospital.

10 Q. Was that something you had planned?

11 A. It was to escape, yes.

12 Q. Were you caught?

13 A. I was.

14 Q. And so then you're sent back to the Grant
15 County Detention Center; is that correct?

16 A. The same day, yes.

17 Q. And did you -- you mentioned another
18 assault on a peace officer?

19 A. Battery on a police officer.

20 Q. And did that occur at the Grants County
21 Detention Center as well?

22 A. Grant County.

23 Q. Grant County. And what did you do then?

24 A. I physically assaulted a CO that was
25 speaking to my girlfriend about not being with me.

1 And I took it upon myself to confront him, he denied
2 it, and I physically assaulted him.

3 Q. And eventually, did you enter into a plea
4 agreement that would have all of those cases
5 resolved into one sentence?

6 A. It was eventually resolved into one
7 sentence and my street charges were dismissed.

8 Q. And I'm going to show you Exhibit 607.
9 I'm going to show you the fourth page of that. What
10 is it that we're looking at here?

11 A. This is the front page of my J&S, judgment
12 and sentence.

13 Q. Okay. And it has here --

14 A. Right.

15 Q. -- circled on the top, it says, "Number
16 CR." Would that be all the different cases that you
17 had?

18 A. Those are all of them, and I think
19 excluding the escape that was run concurrent. I
20 don't think that's in there.

21 Q. Okay. And then I'm going to go -- and it
22 mentions the different cases there?

23 A. Right.

24 Q. And I'm going to go to the next page,
25 please. And does this --

1 THE COURT: Do we need to move the
2 admission of 607?

3 MS. ARMIJO: We already admitted it, Your
4 Honor, when he first got on the stand.

5 MR. SINDEL: I'm sorry. I don't recall
6 that.

7 MS. ARMIJO: The pen pack.

8 MR. SINDEL: That's fine.

9 THE COURT: What was it part of?

10 MS. ARMIJO: Exhibit 607, Your Honor, when
11 he first took the stand.

12 THE COURT: Okay.

13 BY MS. ARMIJO:

14 Q. All right. Now, sorry, we're having
15 technical issues now, and this is the fourth page of
16 Exhibit 607. Are these the different charges that
17 you were telling us about?

18 A. All of them except Count 5, yes, ma'am.

19 Q. And when you say Count 5, because that was
20 dismissed?

21 A. It was dismissed the day of my plea
22 agreement.

23 Q. Okay. And did you eventually -- as a
24 result of all these charges, were you sentenced to
25 the Department of Corrections?

1 A. Yes, ma'am.

2 Q. The Corrections Department?

3 A. Yes, ma'am.

4 Q. And how long were you sentenced?

5 A. For CR-03213, I was given 15 years. And
6 for the next two under that, battery upon a peace
7 officer, 18 months, and escape from jail, 18 months.

8 Q. And were those all running concurrent or
9 consecutive?

10 A. They were consecutive. The only one
11 concurrent was one of the escapes.

12 Q. Okay. And so what was your sentence
13 overall, then, as a result of --

14 A. Eighteen years.

15 Q. Eighteen years. Okay. And with that, did
16 you head to the Corrections Department?

17 A. I did.

18 Q. And where were you first sent to?

19 A. To RDC in Los Lunas.

20 Q. And when you went to RDC, what was the
21 purpose of that?

22 A. To -- it's an orientation period where you
23 get classified based on your age, your crime, and
24 what level you'd be going to after that.

25 Q. Where were you sent to?

1 A. I was sent to Hobbs, New Mexico, Lea
2 County Correctional Facility, Level 3 line.

3 Q. So I guess you were determined to be a
4 Level 3 inmate when you first went in?

5 A. Yes.

6 Q. And while you were in Hobbs, did you have
7 any incidents that led to some disciplinary issues?

8 A. Disciplinary issues within the Corrections
9 or outside?

10 Q. Yes.

11 A. Minor reports there.

12 Q. Okay. And so how long were you there?

13 A. I was there for anywhere between five to
14 six months.

15 Q. And where were you sent after that?

16 A. Santa Rosa prison, Guadalupe County
17 Detention Center, Correctional facility.

18 Q. And what level were you then classified
19 as?

20 A. Level 3 still.

21 Q. Okay. And how long were you there?

22 A. Three months.

23 Q. Did something happen when you were at that
24 facility that led to you being moved?

25 A. I physically assaulted three correctional

1 officers and one state police officer with a weapon.

2 Q. And can you tell -- when was that?

3 A. I think in May.

4 Q. May of 2005?

5 A. Yes, ma'am.

6 Q. And what led up to that incident?

7 A. An officer disrespected me and put my life
8 in jeopardy on false accusations. So I took it upon
9 myself to put a soda can in a sock and assault that
10 officer. It just happened to be that two other
11 officers got in the way and were physically
12 assaulted, as well. And the state police officer
13 came to take my pictures and question me that night,
14 and I got into a physical altercation with him.

15 Q. Were you ever charged with that incident,
16 or did you just face disciplinary?

17 A. I faced disciplinary, was sent to PNM
18 Level 6 North facility, and charged on the streets.

19 Q. Charged by the State of New Mexico?

20 A. Yes, ma'am.

21 Q. And did you actually get convicted of
22 that?

23 A. I was. I took a plea deal.

24 Q. All right. And I'm going to show the next
25 page, I should say, Exhibit Number 607 again, which

1 would be Bates No. 8786. Is this the front page of
2 your judgment in that case?

3 A. Yes, ma'am.

4 Q. And did you plead guilty to that one?

5 A. I pled no contest.

6 Q. And how many years did you receive for
7 that?

8 A. I think seven, with a year and 45 days'
9 credit.

10 Q. Okay. I'm going to go to Bates 8788.
11 Does that indicate the number of years you received?

12 A. Yes.

13 Q. And was that consecutive or concurrent to
14 the 18 years that you previously received?

15 A. It was consecutive.

16 Q. Just so we're clear, "consecutive" means
17 you have to first finish the first sentence that you
18 have; correct?

19 A. Correct.

20 Q. Then you get to start your second
21 sentence?

22 A. Correct.

23 Q. All right. And along with that -- and is
24 that -- I'm going to show Exhibit Number -- or the
25 same exhibit, but Bates 8789.

1 And what are we looking at?

2 A. That's my picture from my pen pack in RDC,
3 Los Lunas.

4 Q. So that is when you first got to
5 Corrections?

6 A. That's when I first got to Corrections.

7 Q. All right. So then you were sent to PNM
8 North?

9 A. After that assault, yes.

10 Q. Then were you classified as Level 6 at
11 that point?

12 A. Yes, ma'am.

13 Q. Before going up there, while -- before you
14 were classified as Level 6, had you ever heard of
15 the SNM?

16 A. Yes, I had interactions with the SNM prior
17 to going to Level 6, yes.

18 Q. And what year did you go to Level 6?

19 A. 2005.

20 Q. And when you say you had contact with SNM
21 or knew about them, can you explain that to the
22 jury?

23 A. When I was sent -- when I assaulted the
24 officer in Grant County Detention Center, I was sent
25 to Los Lunas Detention Center. I met Mario Montoya,

1 my roommate in Seg. I went to the line there, and I
2 met Willie Romero and Nathaniel Duran, who were SNM
3 members. Then when I went to Hobbs, there was
4 another guy from Silver City, he was from China
5 Town, who was a Sindicato, and he was one of my
6 friends, along with Whiskers, Sammy G.

7 Q. And who is Sammy G?

8 A. Sammy Griego. He's an SNM member.
9 Whiskers is an SNM member. Tony Guana. And when I
10 was in Santa Rosa, I lived with Cricket as well,
11 Steven Trujillo, from China Town Locos, from Silver
12 City.

13 Q. So that was all people you had met before
14 you went to PNM; is that correct?

15 A. That's correct.

16 Q. Okay. And when you got to PNM, were you
17 an SNM member?

18 A. No.

19 Q. When you got -- what happened when you
20 went to PNM, as far as -- did you meet other SNM
21 members?

22 A. I was -- for the assault on a correctional
23 officer, that was put all over the news, and I was
24 put into North 3BV pod where there was SNM members.
25 No one really knew me there, other than another

1 individual in Silver City who was an SNM member,
2 Tommy Valdez. He sent me a letter and told me to
3 start talking to certain individuals. My neighbor
4 was Baby Rob.

5 Q. I'm going to stop you, just because you're
6 mentioning some names.

7 A. Okay.

8 Q. Okay. So there was a person that you knew
9 up there. You mentioned Tommy Valdez?

10 A. Right.

11 Q. You said he sent you a letter.

12 A. Right.

13 Q. What kind of letter was that?

14 A. It was a letter sent from the CO from one
15 unit to the next unit during breakfast.

16 Q. Okay. So now I think the jury has already
17 heard about interprison mail. Was this an official
18 interprison mail, or was this just a CO bringing you
19 a letter from him?

20 A. This is not interprison. This is just a
21 CO passing a letter for us.

22 Q. And did you know Tommy Valdez?

23 A. Yes, I knew him from the county jail.

24 Q. And so based on the contents of that
25 letter -- oh, you mentioned another person. You

1 mentioned Baby Rob.

2 A. Right. He was my neighbor.

3 Q. Do you know his full name?

4 A. Robert Martinez.

5 Q. Was he an SNM Gang member?

6 A. Yes.

7 Q. And would you have conversations with him?

8 A. A little at that time. Not as much.

9 Q. Did you have a nickname before you even
10 went to prison?

11 A. Yes.

12 Q. What is your nickname?

13 A. Blue.

14 Q. Is it a childhood nickname?

15 A. It's a nickname that I acquired from the
16 New Mexico Boys School, Springer. A teacher started
17 calling me that, Baby Blue, and it just changed to
18 Blue. My teacher.

19 Q. And do you know the basis for that?

20 A. She said I always looked depressed or sad.

21 Q. Now, at some point do you start
22 associating with more SNM members?

23 A. Yes.

24 Q. And tell us about that.

25 A. All right. When I got there, like I said,

1 I was all over the news for those assaults.
2 Marijuano, Lupe Urquizo -- I had no shoes. They
3 took my shoes for evidence for the assault on the
4 correctional officer. He sent me shoes. I met
5 Edward Garcia, Crazo; Carlos Herrera, Lazy; Baby
6 Robert. And I met Arturo Garcia in the yard.

7 Q. Okay. You just kind of did a little nod.
8 Do you see Arturo Garcia here in the courtroom?

9 A. Yeah, I could see him -- maybe if he
10 stands up, I could see him better.

11 Q. Okay. Where is he?

12 A. I think he's in the back somewhere.

13 Q. Okay. Can you describe what he's wearing?

14 A. No.

15 MS. ARMIJO: Your Honor, may the witness
16 stand up so he can get a better view?

17 THE COURT: He may.

18 A. Yeah, I can see him.

19 BY MS. ARMIJO:

20 Q. You can see him?

21 A. Yes.

22 Q. What is he wearing?

23 A. Tan shirt with a blue tie.

24 Q. Okay. Is he wearing a jacket?

25 A. Yes, ma'am.

1 Q. And where is he in relationship to these
2 gentlemen here?

3 A. He's towards the right of Chris Chavez --
4 towards the left of Chris Chavez.

5 MR. BLACKBURN: Your Honor, we'll
6 stipulate that he identified him.

7 THE COURT: Is that sufficient?

8 MS. ARMIJO: Yes, Your Honor.

9 BY MS. ARMIJO:

10 Q. When you say to the left of where
11 Mr. Chavez was sitting --

12 A. Yes, ma'am.

13 Q. Okay. Now, where did you say you met him?

14 A. I met him in the Level 6 yard.

15 Q. Okay. Would that be at the North
16 Facility?

17 A. The North Facility.

18 Q. When you say "yard," what are you
19 referring to?

20 A. There is about 12 or 13 cages in the Level
21 6 compound that all Level 6 inmates go to.

22 Q. Have you ever heard a nickname for it?

23 A. Jurassic Park.

24 Q. And is that where you initially met Arturo
25 Garcia?

1 A. I didn't know who he was at the time I met
2 him, but, yeah, that's where I met him at.

3 Q. And did you know him by a nickname?

4 A. I didn't even know him by his name at that
5 time.

6 Q. Okay. Eventually, do you become an SNM
7 Gang member?

8 A. I do.

9 Q. And what was involved in that?

10 A. Arturo Garcia. He brought me in.

11 Q. Okay. When you say "brought in," what do
12 you mean?

13 A. I was in the yard. The day I came across
14 him, I was walking around. And he pulled me over,
15 he goes, "Hey, you're Baby Rabbs' little homie."

16 Q. Baby Rabbs'?

17 A. I didn't know him by that name. I said,
18 "Baby Rabbs?"

19 He goes, "Conejo."

20 That's who I knew Tommy Valdez as. And he
21 told me, "You want to be down with the S, or what?"
22 I told him it was something to think about.

23 Q. Okay, now -- and you told him you'd think
24 about it?

25 A. Told him I'd think about it, something to

1 think about.

2 Q. Did you think about it?

3 A. Yes, ma'am.

4 Q. What happened?

5 A. I had two more yards with Arturo Garcia
6 convincing me why I should become a carnal. And
7 during the third one, he told me, "Well, everyone
8 already thinks you're a carnal, so you should just
9 jump on the ride."

10 Q. Jump on the what?

11 A. Jump on the ride.

12 Q. What does that mean?

13 A. The SNM is referred to -- a bunch of
14 different terms with us who are SNM members. We
15 call it the ride, the caddy, the onda, the clicka,
16 the homies. We have a bunch of different terms when
17 we're talking to one another.

18 Q. Okay. So he said you should just join the
19 ride?

20 A. I should jump in the ride, because
21 everyone thinks I'm already in.

22 Q. So what did you decide at that point?

23 A. I told him I'd think about it.

24 Q. Okay. Still not convinced yet?

25 A. No. I take everything I do very

1 seriously. So I --

2 Q. Then what happened?

3 A. I was in the first handball cage in the
4 Jurassic Park yard. And Eugene Martinez comes to
5 me. He's on the track, and he goes, "Hey, the
6 carnals want to know, yes or no? Are you going to
7 get in?"

8 I told him, "Simon, I'm down."

9 Q. What does "simon" mean?

10 A. Yes.

11 Q. Okay. So at that point you thought about
12 it and you decided that, yes, you were?

13 A. Yes.

14 Q. All right. Was it ever told to you what
15 would be expected of you as an SNM Gang member?

16 A. I was already a gang member. I knew that
17 it was violence, that it was representing the SNM to
18 the fullest. It wasn't really sat down, say, "These
19 are the rules you've got to follow," but Tommy
20 Valdez pulled me out later on and ran down who was
21 on the tabla and who eventually -- if anything
22 happened, who we would ride behind. He told me
23 that --

24 Q. You mentioned a couple of things. I just
25 want to get a couple things. You mentioned a tabla.

1 What's a tabla?

2 A. A tabla is a group of individuals who run
3 the SNM.

4 Q. Now, I guess at this point, now that
5 you're a member, I want to ask you some questions
6 about the SNM.

7 A. Right.

8 Q. What is the SNM?

9 A. It's a criminal gang organization based
10 out of the New Mexico Department of Corrections.

11 Q. And what is the SNM's purpose?

12 A. To control the prison system and work to
13 control the streets at the same time.

14 Q. Now, and how is it that they try to
15 accomplish that?

16 A. Violence.

17 Q. Now, I've been using the term "SNM." Is
18 that initials for something?

19 A. Yes.

20 Q. What is its full name?

21 A. Sindicato de Nuevo Mexico.

22 Q. Now, does -- when you talked about
23 violence, how does violence come into play with it?

24 A. Violence is everything to play with it.
25 It's everything. We control the system through

1 fear. Everyone knows at any point in time, if you
2 got troubles with the SNM, you're going to get
3 stabbed, you're going to get killed, if you cross
4 the SNM.

5 Q. You said if you cross the SNM. Would that
6 extend to SNM members?

7 A. Yes.

8 Q. Now, is there a structure within the SNM?

9 A. Yes, it's the tabla.

10 Q. Okay. You talked about that a little bit
11 before. You said it's a group of individuals?

12 A. Right, five individuals.

13 Q. Now, is there somebody above the tabla?

14 A. There's people who are the rightful
15 leaders of the SNM. But they were out of state at
16 the time that I got brought into the SNM.

17 Q. Okay. When you were brought into the SNM,
18 who were the leaders that were out of state?

19 A. Ramon Clark, Razer; and Anthony Baca, Pup.

20 Q. And with them being out of state, who was
21 left in charge to run it?

22 A. Gerald Archuleta and Arturo Garcia pretty
23 much ran the SNM at those times. But there was
24 three other individuals. There was Rupert Zamora;
25 there was Baby Rob, Robert Martinez; and Juan

1 Mendez, including Arturo Garcia and Gerald
2 Archuleta.

3 Q. You mentioned Gerald Archuleta. Does he
4 have a nickname?

5 A. Styx.

6 Q. Does he go by another nickname, as well?
7 Have you ever heard the term Grandma?

8 A. Yeah, Grandma. And there is another one.
9 But Grandma is one he used. Palitos.

10 Q. "Palitos" means Styx in Spanish?

11 A. I believe so.

12 Q. And did you eventually learn whether or
13 not Arturo Garcia had a nickname?

14 A. Had a nickname as far as what?

15 Q. A nickname.

16 A. Oh, I've never called him by his nickname.

17 Q. Do you know if he has a nickname within
18 the gang?

19 A. Shotgun.

20 Q. Now, in reference to the tabla, what does
21 the tabla do?

22 A. They pretty much call the hits, orders to
23 kill. They resolve issues within the SNM. They're
24 pretty much a panel, an organization that runs that
25 organization.

1 Q. Now, do the SNM -- do they commit any
2 crimes?

3 A. Yes.

4 Q. What type of crimes do they commit?

5 A. From murder to stabbings, assaults,
6 robbery, theft, drug distribution, selling of guns.
7 Pretty much they've got their hands in pretty much
8 everything.

9 Q. And does this occur inside the prison or
10 outside?

11 A. The drug distribution and murders, yes.

12 THE COURT: Hold on.

13 MR. SINDEL: Your Honor, has this
14 individual ever been outside of a prison when he was
15 alleged to be a member of the SNM?

16 THE COURT: Well, lay some foundation how
17 he would know about anything outside the prison.

18 BY MS. ARMIJO:

19 Q. Are you aware of whether or not the SNM
20 conducts criminal activity outside of the prison
21 setting?

22 THE COURT: And this is just a yes-or-no
23 answer at this point.

24 A. Yes.

25 Q. And without getting into what that answer

1 is, how do you know that?

2 A. Because I was a part of the SNM. I knew
3 that because I was a member of the SNM.

4 Q. Okay. And even though you weren't out on
5 the streets, how is it that you are aware of their
6 activities on the street as far as illegal
7 activities?

8 A. Well, I've seen plenty of these guys come
9 and go in and out of the prison system, coming back
10 for murder, for, some of them, purse-snatching and
11 other bullshit crimes, you know; just drug addicts,
12 and selling drugs and guns, anything and everything.

13 MS. TORRACO: Your Honor, objection. All
14 of this is based on hearsay.

15 THE COURT: I'm afraid this part, of him
16 being on the outside, would be that way, so I'll
17 sustain on the outside.

18 BY MS. ARMIJO:

19 Q. Now, did you -- let me ask it this way.
20 Did you ever -- drug activity --

21 A. Right.

22 Q. Were you involved in SNM drug activity?

23 A. Yes.

24 Q. Explain how you personally were involved
25 in SNM drug activity.

1 A. I would -- Arturo Garcia, I did plenty of
2 drug transactions with him. I was given drugs by
3 the SNM. I was involved in sending money to certain
4 individuals who would pay off an officer to bring in
5 drugs. And I would get a large cut of the clavo
6 when it came in. And I sold drugs. I used drugs.
7 I gave drugs away to other SNM members.

8 Q. Okay. Now, specifically, I'm going to be
9 a little bit more specific. Were you involved in
10 any drug activity as it relates to the outside? In
11 other words, did you have contact with people on the
12 outside, and were you involved with any activity of
13 bringing drugs outside of custody into the
14 Corrections?

15 A. Yes, ma'am.

16 Q. All right. And was that related to the
17 SNM?

18 A. It was related to the SNM, yes.

19 Q. And what would you do in those instances?

20 A. At the time that I was helping bringing in
21 drugs, myself and Tommy Valdez were working with two
22 LC members to bring in drugs.

23 Q. What's LC?

24 A. That's Los Carnales. It's a rival gang to
25 the SNM.

1 Q. Okay.

2 A. We would take turns paying the officer to
3 bring the drugs in, and we split our clavo between
4 the four of us.

5 Q. When you say "clavo," what does that mean?

6 A. It's a package of drugs that will have
7 marijuana, cocaine, heroin, Suboxone, every kind of
8 drug, and it's all put together. It's called a
9 clavo.

10 Q. And so you would say you would receive
11 that?

12 A. Right.

13 Q. From correctional officers?

14 A. The correctional officer would drop it on
15 us, yeah.

16 Q. Obviously, not with permission from the
17 Corrections Department.

18 A. No, ma'am.

19 Q. All right. And were you involved in
20 actually a pay structure to get that actually paid?

21 A. Yes, I've been involved in the pay
22 structure for that.

23 Q. Okay. Tell us about that.

24 A. Arturo Garcia put me in on some of his
25 drug activity where he would ask certain carnals who

1 he can feel that are trustworthy and have the money
2 to fund what he was doing. He would ask certain
3 individuals, put \$200 in here, put \$300 here.
4 There's \$500 to pay for the officer to bring in the
5 drugs, and he would support the drug part of it.

6 Q. Okay.

7 A. He just needed the money for funding.

8 Q. Now, are there rules within the SNM?

9 A. Yes, ma'am.

10 Q. Tell us about the rules.

11 A. The rules are -- society's rules do not
12 matter within the prison system.

13 MS. TORRACO: Objection, Your Honor.

14 Could we have some foundation about how he knows
15 this or -- he's just kind of spewing out all of
16 these general statements, and I think there needs to
17 be a lot more foundation and a lot less hearsay.

18 THE COURT: Well, I don't see any hearsay
19 here on the rules, but you might lay some foundation
20 as to how he knows the rules.

21 BY MS. ARMIJO:

22 Q. How long have you been an SNM Gang member?

23 A. Since 2005, September of 2005.

24 Q. And are you aware of the rules of the SNM,
25 without getting into them?

1 A. Yes, ma'am.

2 Q. Did you abide by the rules of the SNM?

3 A. Yes, ma'am.

4 Q. Did you actually kill somebody as a result
5 of the rules of the SNM?

6 A. I was involved in a murder, yes.

7 Q. All right. Were you involved in other
8 assaults for the SNM as a result of the rules for
9 the SNM?

10 A. Yes, ma'am.

11 Q. Were these rules provided to you by
12 leaders of the SNM?

13 MR. SINDEL: Objection to the leading.

14 THE COURT: Well, these are foundational.
15 I can't make both of you happy.

16 MR. SINDEL: I'm sorry, I couldn't --

17 THE COURT: I can't make both of you
18 happy. She's laying a foundation.

19 MR. SINDEL: You can make me happy.

20 THE COURT: You want a little less
21 foundation?

22 See if you can try not to be leading and
23 ask a foundational question.

24 BY MS. ARMIJO:

25 Q. Okay. Did you have conversations with

1 leaders of the SNM?

2 A. Yes, I had conversations with them.

3 Q. Okay. Based on your conversations with
4 the leaders -- and did you observe SNM Gang members?

5 A. Yes.

6 Q. Okay. Since you went up to the
7 Penitentiary of northern New Mexico, PNM North, were
8 you housed with SNM Gang members?

9 A. Yes.

10 Q. Did you personally live by the rules?

11 A. I lived by the rules.

12 Q. Did you see and observe other SNM -- were
13 you housed with other SNM Gang members?

14 A. Yes.

15 Q. Since 2005?

16 A. Yes, ma'am.

17 Q. And were you able to observe everything
18 that they did?

19 A. Yes.

20 Q. Did you take part in decision-making for
21 the SNM?

22 A. Yes.

23 Q. Were you given orders by the SNM?

24 A. I was.

25 Q. What was your role -- I'm going to go up

1 before 2014. Before 2014, what would you consider
2 yourself within SNM?

3 A. Before I left?

4 Q. Before 2014, before the Javier Molina
5 murder.

6 A. Before? I was a soldier. I was becoming
7 an influential member within the SNM.

8 Q. And what is a soldier?

9 A. I carried out anything that the leadership
10 tells me to carry out. I know when someone is
11 fucked up and I'm expected to assault them, kill
12 them, based on what they've done wrong.

13 Q. Did you have close personal conversations
14 with Arturo Garcia?

15 A. Yes.

16 Q. About the SNM?

17 A. Yes, ma'am.

18 Q. And did you learn a great deal about the
19 SNM and their rules specifically through Arturo
20 Garcia?

21 A. Specifically through him and Robert
22 Martinez, yes.

23 Q. Okay. Robert Martinez is another SNM
24 leader that you said was on the tabla?

25 A. Right.

1 Q. All right. Based on all that, and your
2 personal experience -- I forget where we were. I
3 believe I was asking you about the rules of the SNM.

4 A. Right.

5 Q. Okay. Can you now tell us about the rules
6 of the SNM?

7 A. With most of us that are recruited into
8 the SNM, we are already groomed in the rules of the
9 convict. We're groomed in the rules of the prison
10 system. The whole reason of recruiting someone into
11 the SNM is because you don't have to hold their hand
12 and tell them what is right or wrong.

13 Q. So now, so when you become an SNM member,
14 are you -- how is it that you are aware of the
15 rules?

16 A. You pretty much learn as you go. You
17 already got the rules established as a criminal
18 code, and now you're doing it for a bigger scale on
19 the SNM, and you're taking on issues that don't
20 really involve you personally, but they involve the
21 SNM, so therefore, they're your issues. If someone
22 disrespects the SNM or one individual from the SNM,
23 they disrespect the whole ride. You have to take
24 them out, you have to stab them, you have to
25 represent the SNM to the fullest.

1 Q. Okay. So then is it fair to say you
2 cannot disrespect the SNM?

3 A. You cannot disrespect the SNM. If you do,
4 if you want to, you're going to be in a whole lot of
5 trouble.

6 Q. Okay. You talked a little bit -- I want
7 to ask you about maybe some other rules of the SNM.
8 Are you allowed, as an SNM Gang member, to cooperate
9 with law enforcement?

10 A. No, ma'am.

11 Q. Tell us about that.

12 A. Oh, it's a green light. Automatic green
13 light.

14 Q. What's a green light?

15 A. It's an order to kill.

16 Q. And so that's prohibited, then?

17 A. Yes, ma'am.

18 Q. Okay. Are you supposed to admit to being
19 a member of the SNM?

20 A. Never.

21 Q. Do you have any SNM tattoos?

22 A. I do not.

23 Q. Are you validated by the New Mexico
24 Corrections Department?

25 A. I am not.

1 MR. SINDEL: I'm going to object as
2 hearsay.

3 THE COURT: I'm not sure how he'd know
4 that other than through hearsay, so I'll sustain the
5 objection.

6 MR. SINDEL: Thank you, Your Honor.

7 BY MS. ARMIJO:

8 Q. Can you -- okay. I believe we were
9 talking about -- okay, what about rivals? Does the
10 SNM have rivals?

11 A. Yes.

12 Q. I believe you talked a little bit about
13 the Los Carnales.

14 A. Right.

15 Q. Are they referred to as LC?

16 A. They're referred to as LC.

17 Q. Are there any rules about what you are to
18 do and how you need to get along with an LC member?

19 A. Oh, we're housed with them, we carry
20 ourselves with respect, we respect them, and at the
21 same time, if the first opportunity happens, then we
22 have to stab them. But we talk to them, we
23 associate with them, we carry ourselves like men in
24 there. And a part of respecting others is
25 representing the SNM. But towards the end of -- I

1 think around 2009, I think, was a truce, a ceasefire
2 from the SNM and LC-ers to try to take back the
3 Level 3 lines. So up to the current time, there is
4 still a ceasefire with the LC members.

5 Q. Prior to that?

6 A. Prior to that, yes.

7 Q. Prior to 2009, when you say before the
8 ceasefire with the LC --

9 A. Right.

10 Q. -- what was the rule in reference to an
11 LC?

12 A. Kill them.

13 Q. Now, you already talked about the tabla,
14 and you mentioned that you were a soldier for the
15 SNM. Have you ever heard the term "hitter"?

16 A. Yes.

17 Q. What does that mean?

18 A. It's someone who is frequently bringing in
19 drugs to the facility.

20 Q. Okay. So would they -- that's kind of
21 like a position with the SNM?

22 A. It's not necessarily a position, but it's
23 something that people get recognized as, and when
24 they show up to a pod, "Oh, he's a hitter," you know
25 that he's going to be bringing in drugs or he has

1 drugs.

2 Q. Now, once -- you mentioned that you were a
3 street gang member. When you became an SNM member,
4 how did that -- could you coexist as both members,
5 or does one take dominance over the other?

6 A. The SNM takes dominance over the other.

7 Q. Okay. And how is that?

8 A. Well, with my barrio, my barrio didn't get
9 along with China Town, so when I became an SNM
10 member, they ceased to stop hating on the SNM
11 because of me. And so it elevates the gang, but at
12 the same time, my barrio -- they didn't sit well
13 with it. But they stopped hating on the SNM because
14 of me.

15 Q. Now, did you ever commit any crimes for
16 the SNM?

17 A. Yes.

18 Q. What was the first crime that you can
19 recall as far as being associated with you doing
20 something for the SNM?

21 A. Well, I was an SNM member when I stabbed
22 Robert Esparza.

23 Q. Now, when was that?

24 A. 2008.

25 Q. And who was Robert Esparza?

1 A. He was a Burque member, a Burqueno.

2 Q. Were they a rival?

3 A. They were a jump start to a new prison --
4 trying to be a new prison organization at that time,
5 yes, and they are now.

6 Q. Okay. And did you have an issue with him?

7 A. Yes, I did.

8 Q. What issue did you have?

9 A. I was selling him drugs, and I was letting
10 him run up a bill because he was from the Barelas
11 gang, and I knew I had a lot of carnals from
12 Barelas, so I let him purchase drugs from me without
13 paying immediately. And he showed up late for some
14 money on me, and I told him that he better pay me.
15 And he walked by my house and laughed in my window,
16 and I stabbed him, I think, four or five days later.

17 Q. Okay. And where were you at?

18 A. Level 6 North facility, in solitary
19 confinement.

20 Q. And you said he laughed at you?

21 A. Right. He stopped by my door on the way
22 to the shower and he laughed.

23 Q. Now, was this actually videotaped?

24 A. Yes, ma'am.

25 MS. ARMIJO: And Your Honor, at this time

1 I'd like to move for the admission of 868-A and
2 868-B.

3 THE COURT: Any objection? Not hearing
4 any objection from the defendants, 868-A and 868-B
5 will be admitted into evidence.

6 (Government Exhibits 868-A and 868-B
7 admitted.)

8 BY MS. ARMIJO:

9 Q. Now, you said four or five days later you
10 assaulted him?

11 A. Yes, ma'am.

12 Q. What did you assault him with?

13 A. With a sharpened piece of steel that
14 resembled an icepick.

15 Q. All right. And is there a term for
16 weapons in prison?

17 A. A shank or a fierro.

18 Q. And is that something that you -- is that
19 what that weapon would be considered?

20 A. What's that?

21 Q. A shank.

22 A. Yes, ma'am.

23 Q. And are you allowed to have shanks in
24 prison?

25 A. No, ma'am.

1 Q. So what plan did you come up with?

2 A. Well, first, I was borrowing a shank from
3 another SNM member, Guilardo Rodriguez, which he
4 wanted it back. So I brought it to David Calbert,
5 Spider's attention that I need a fierro. And we
6 went to yard, and he fished it through the cages to
7 me.

8 Q. Okay. When you say you went to yard,
9 you're talking about Jurassic Park?

10 A. Yes, ma'am.

11 Q. And when you say "fishing," what do you
12 mean?

13 A. I got a pen with a piece of string on it,
14 and I flicked it through a hole. And it went into
15 the other hole, and he tied the shank onto it and
16 passed it through to me.

17 Q. Okay. So you were able to get a shank
18 from David Calbert. Is he also known as Spider?

19 A. Yes, ma'am.

20 Q. And so then what did you do?

21 A. I went back to my cell, and I put a handle
22 on it, and I attempted to get him other ways. But I
23 hid in the shower on a day that the CO was working
24 overtime. He was going home at 9:00 or 10:00, and I
25 asked him to put me in the shower right before he

1 was leaving. He put me in the shower.

2 The next shift came in and they didn't
3 know I was in the shower. So I stood in there until
4 they brought Robert Esparza to the shower.

5 MS. ARMIJO: All right. And Your Honor,
6 at this time I'm going to play 868-B first.

7 MR. SINDEL: Your Honor, can we dim the
8 lights? It's very hard see back here. Could you
9 possibly dim the voice, too?

10 THE COURT: Well, I think you're the one
11 that may not be able to see it as well, but the
12 monitors --

13 MR. SINDEL: I can go back over and come
14 back. I can't see it over there at all.

15 THE COURT: Okay. It looks pretty good on
16 the monitors.

17 MS. ARMIJO: And I believe we're going to
18 fast-forward it, because this video is quite long.

19 BY MS. ARMIJO:

20 Q. Now, before we start, what is it that
21 we're looking at?

22 A. The North 3-B U pod.

23 Q. Okay, 3-B U pod. And was there -- are you
24 aware of -- different facilities sometimes have pods
25 designated by color?

1 A. Yes, ma'am.

2 Q. Maybe not officially, but that is because
3 they're different colors on the inside?

4 A. That's correct.

5 Q. Okay. And now where should -- where are
6 we going to start seeing activity before we start
7 playing it?

8 A. I think you'll see activity, but up to 52
9 minutes I think you'll see where it begins.

10 Q. Okay. And are you going to be on the
11 screen?

12 A. Yes, ma'am.

13 Q. And are you going to be on the top or
14 lower level?

15 A. I'll be on the bottom lower level.

16 Q. Okay. And let's see if we can play it.
17 Let's see where we're at. You think it's at 52?

18 A. I think it's around 52.

19 Q. We're going to try this right now, first,
20 so we can see what's going on here. The time on
21 there says 9:32:15 seconds, and it's playing.

22 (Tape played).

23 Q. Where are you at this point?

24 A. The officer looked in the shower and I was
25 pressed up against the shower wall. I seen him look

1 in and he didn't see me.

2 Q. He didn't see you?

3 A. No, ma'am.

4 Q. Now is he bringing an inmate to shower?

5 A. Yes, he's bringing Robert Esparza.

6 Q. And just while we wait for that, in the
7 picture we see some doors. I'm going to circle them
8 here.

9 A. That's pipe chase doors.

10 Q. What are they called?

11 A. Pipe chase.

12 Q. So those are not --

13 A. There is Robert Esparza.

14 Q. Okay. And is he being put in the shower?

15 A. They attempted to put him in the shower,
16 yes.

17 Q. Then now we see -- is that you coming out?

18 A. That's me coming out stabbing him.

19 Q. And are you -- you don't have a shirt on,
20 either?

21 A. No.

22 Q. Okay. Is Esparza -- is he handcuffed?

23 A. Yes, he is.

24 Q. Okay. And the guard is no longer in the
25 picture. What happened to him?

1 A. I grabbed Esparza in a head lock and I
2 showed the guard the weapon, and he took off
3 running.

4 Q. Okay. And are you two the only two going
5 while this is happening?

6 A. Yes, ma'am.

7 Q. Sorry. It kind of froze there. While
8 she's trying to load it, are there two different
9 camera views that we're going to see?

10 A. Yes, there is.

11 Q. And right now we're looking at one camera
12 view that has you and he on the floor, like to the
13 right of the stairs; is that correct?

14 A. That's correct.

15 Q. Okay. And then is there another view also
16 that we see later on that has you two on the stairs
17 from a different angle?

18 A. Theres's a different angle, yes.

19 Q. Okay. And do you know approximately how
20 long this incident lasted?

21 A. I do not.

22 Q. Eventually, what happens?

23 A. After I stabbed him, he began shaking and
24 went unconscious. And I thought he was dead, so I
25 left.

1 Q. Okay. Before that, did correctional
2 officers try and come and stop it?

3 A. They shot me with nonlethal rounds, with
4 rubber bullets and beanbags, and dispersed three
5 canisters of gas. And he got away from me at one
6 point, and I hid behind the pole while they were
7 reloading the shotgun, and waited till they
8 dispersed all their rounds.

9 Q. Do you know how many times you were hit?

10 A. By 20 rubber bullets and three beanbags.

11 Q. And did that stop you?

12 A. No, ma'am.

13 Q. And you indicated that -- all right, let's
14 see if we can -- is that you two on the floor there?

15 A. Yes. They're shooting at me right there,
16 and I'm trying to get lower, lower than him.

17 Q. And where are they shooting from?

18 A. From a food port in the control center
19 bubble.

20 Q. And I guess we can talk about that. Is
21 this camera view -- you said the control center --

22 A. Right.

23 Q. -- bubble. Is there, like, an area here
24 where someone, a correctional officer, can see the
25 whole area?

1 A. Yes, there was three correctional officers
2 in the bubble, and about from six to five of them
3 watching at the front door.

4 Q. All right. Now, where are you at this
5 point?

6 A. I'm over towards the left of the screen
7 behind a pole, waiting for the COs to disperse their
8 rounds. And while reloading, I run to go get Robert
9 Esparza again to begin stabbing him.

10 Q. While that happened, what did you do? I'm
11 sorry?

12 A. There I go right there, and I get him by
13 the handcuffs, and I drag him back.

14 Q. Okay. I think we can actually go to the
15 next. There we go.

16 A. Right there, I'm trying to hurry up and
17 get him under while they load the shotgun up.

18 Q. Okay. We see some --

19 A. Tear gas.

20 Q. Do you see what you're doing right now?

21 A. Yeah. I went to rip off the top of his
22 ear. I bit off the top of his ear.

23 Q. And did you actually do that?

24 A. Yes, ma'am.

25 Q. Are you behind the stairs now?

1 A. I'm behind the stairs with my knee on his
2 chest, with my hand around his neck, and I'm
3 stabbing him in the face and the eyes.

4 Q. And he does live; correct?

5 A. He does; correct.

6 Q. Now, if we could go to Exhibit B. And is
7 this a different view of -- a different camera view?

8 A. Yes, it is.

9 Q. All right. And from this view, can we
10 actually see the cell doors?

11 A. Yes, you can.

12 Q. Okay. And I think we can fast-forward a
13 little bit. Is that him being taken to the shower?

14 A. Yes, that's Robert Esparza.

15 Q. Is that the correctional officer running?

16 A. That's correct.

17 Q. Okay. So in this view, you're to the
18 right screen of it --

19 A. Yes.

20 Q. -- or to the right of the screen, I should
21 say?

22 A. Yes, ma'am.

23 Q. I think we can fast-forward a little bit.
24 All right. Now, at this point we see a person
25 behind the stairs. Is that you?

1 A. That's me.

2 Q. Is this the same point where you said that
3 you were waiting for them to reload --

4 A. Yes, ma'am.

5 Q. -- and stop shooting?

6 A. I was waiting for them to stop shooting
7 and begin reloading the shotgun.

8 Q. Is that the smoke that we're seeing?

9 A. Yes. That's one of the canisters of gas,
10 yes.

11 Q. And is this, then, you on the right-hand
12 side?

13 A. That was me, yes.

14 Q. Is that you where you're trying to bite
15 his ear there?

16 A. Yes, I did.

17 Q. Then does it get pretty smoky?

18 A. It gets pretty smoky. Then I think you
19 could see him in the camera trying to buck me off
20 when I was stabbing him. And you see his legs go
21 limp.

22 Q. All right. And what do you do after you
23 think he's dead?

24 A. I proceeded to go to the front door of the
25 pod with my shank in my hand, and I had my hands up.

1 They told me to give them the shank. And I threw it
2 back to the pod where Esparza was, and I laid on the
3 floor. And they shot me one more time in the back
4 with a bean bag.

5 Q. Is that to make sure you weren't going to
6 attack them?

7 A. To make sure I wasn't going to attack
8 them, I guess, yes.

9 Q. All right. You were taken into custody
10 for that?

11 A. I was handcuffed and put into the strip
12 cage, yes.

13 Q. Were you prosecuted for that incident?

14 A. I was not.

15 Q. And were you given any disciplinary
16 hearings or penalties for that?

17 A. I was given 18 months of disciplinary and
18 put on three-man escort, and lost all my good time.
19 And what else? Made me stay longer in Level 6.

20 Q. You said a couple of things I want to ask
21 you about there. Good time credit. What's good
22 time?

23 A. Good time credit, by staying on good
24 behavior, you say, I'm doing 50 percent, so every
25 year I get another year. It's every 30 days you do

1 good, you have clear conduct, no behavior logs, you
2 get another 30 days. It splits your time in half.

3 Q. So it splits your time?

4 A. Right, if you stay out of trouble.

5 Q. Okay. And clearly, you didn't?

6 A. No. They took all my good time for that.

7 Q. And then, in addition to that, you went to
8 18 months?

9 A. I did 18 months of disciplinary time,
10 which you have 90 days without no electronics; you
11 can't earn no good time; you don't got no canteen;
12 you get, I think, one or two phone calls a month;
13 and you can't proceed through the program to get out
14 of Level 6.

15 Q. So you would have to stay at Level 6?

16 A. You'd have to stay at Level 6 and do your
17 disciplinary time, and then be able to do the step
18 program to get out.

19 Q. When you say the step program to get out,
20 what does that mean?

21 A. Well, you stay there. And if you're doing
22 good, you go to committees, and they'll recommend
23 you for release.

24 Q. What's a committee?

25 A. A committee is -- you've got a unit

1 manager, a caseworker, and a therapist, and I think
2 STIU. And they review your file. If you have good
3 behavior, they'll approve you. And then it goes to
4 the Warden. He has to approve you. And then STIU
5 has to approve you. And then you could get released
6 out of Level 6.

7 Q. Okay. And you mentioned something about a
8 three-man escort. What's that?

9 A. I spent most of my time in Level 6 on
10 three-man escort. At that time of that incident I
11 had barely got off three-man escort for the past
12 nine months. It's where you do not leave your room
13 without shackles and handcuffs. Two officers and a
14 supervisor -- it's with a LT, a sergeant, or a
15 captain. They escort you everywhere.

16 Q. And so if you were being taken -- like we
17 saw on that video, Mr. Esparza being taken by one
18 correctional officer to the shower, when you went to
19 the shower, what would you have after this incident?

20 A. After this incident, I would have two
21 officers and a supervisor; so three officers to take
22 you everywhere. Shackles. It doesn't matter if
23 you're just coming out of your cell just to stand
24 there, they'll put you in shackles and handcuffs.

25 Q. All right. And you say you were not

1 prosecuted by the State for that?

2 A. I was not, no.

3 Q. And why did you feel the need to do that
4 crime?

5 A. Because he disrespected me. He didn't
6 want to pay me my money. And that will go against
7 you in the SNM. If you allow someone to disrespect
8 you, it's not just you at that time; you're
9 representing the whole onda. Anything you do
10 reflects good or bad on the SNM.

11 Q. So you felt you had to do that?

12 A. It will be held against me for a long time
13 if I wouldn't have. It would always come up, say,
14 "Well, you let that fucking dude burn you." And
15 it's a strike against you, pretty much.

16 Q. So after you did this, how were you seen
17 within the SNM?

18 A. I got a lot of love for that.

19 MR. SINDEL: I object. That calls for
20 hearsay and speculation. How can he know what
21 someone else is thinking?

22 THE COURT: He can explain what "love"
23 means. So if you want to lay some foundation for
24 what "love" means.

25 MS. ARMIJO: Okay.

1 BY MS. ARMIJO:

2 Q. What do you mean by you "got a lot of
3 love"?

4 A. Okay. Whenever SNMers conduct violent
5 assaults on anyone, when you show up to a facility,
6 you automatically get a care package. You get,
7 like, for example, me, I went to medical for a week,
8 I stayed there for a week. When I went to 1-A D
9 pod, there was a TV under my sink, hygiene on my
10 table, and canteen on my bed. That was all SNM
11 doing. When the officers left, I sent a fishing
12 line down the tier and I got about two or three
13 spoons from Israel Garcia of marijuana. That's
14 love. That's showing that, hey, you did something
15 good, and you're going to be rewarded.

16 Q. Okay. Did you receive a lot of love after
17 this incident?

18 A. Yeah, I did, yeah.

19 Q. Now, who were you close to in the S during
20 this time?

21 A. At that time?

22 Q. Yes.

23 A. Carlos Herrera, the tabla. I was a
24 supporter of the tabla all the way through. One
25 hundred percent I supported the tabla. Anyone

1 speaking out against it, I told them to kick back
2 and let it go. Don't talk to me about anything
3 disrespectful to the tabla. I was close to a lot of
4 lower ranks of the SNM, the soldiers, Baby Robert,
5 Arturo Garcia. So a variety of SNM that I did time
6 with.

7 Q. Okay. Now, I'm going to talk about Arturo
8 Garcia a little bit here. You already talked
9 about -- would you consider him to be one of the
10 members that brought you into the SNM?

11 A. Yes, he's the member that brought me in
12 initially. There was four of them, but he's the one
13 that recruited me the most.

14 Q. And what would you consider your
15 relationship with Mr. Garcia?

16 A. That was my Big Homie. I did anything for
17 him.

18 Q. When you say "Big Homie," what do you
19 mean?

20 A. When I came into the SNM, he had a
21 position of power, and he was the one that pushed
22 the SNM forward. It was pretty much him and Styx
23 who ran the SNM. He was the one that everyone
24 really feared. He would put you in your place, if
25 you need to be put in your place. And I respected

1 that. He ran the SNM the way a violent criminal
2 organization should be ran.

3 Q. And did you have respect for that?

4 A. Yes, I did.

5 Q. All right. Did you consider yourself
6 close to him?

7 A. I consider myself a follower of him, yes.

8 Q. Now, I'm going to fast-forward to 2011.
9 Did you have another incident involving an inmate
10 while you were incarcerated at PNM?

11 A. I got out of Level 6, I think in 2011
12 finally, after six and a half years. I showed up to
13 the Level 5 facility.

14 Q. What is the Level 5 facility?

15 A. The Level 5 is a facility that you come
16 out on tier time, six at a time.

17 Q. And at PNM, what is the Level 5 facility
18 at that time?

19 A. South facility.

20 Q. And so you made it down to South?

21 A. I did.

22 Q. And what year was that?

23 A. 2011.

24 Q. And when you made it down to South, were
25 you housed with other SNM Gang members?

1 A. Yes, I was in the gang unit, yes.

2 Q. I should ask you this: When you were up
3 at the North, who were you housed with? Not a
4 particular person, but was it -- it's Level 6, but
5 were you with any gang members?

6 A. The Level 6 at the time I spent up there
7 was pretty much base for SNM. There was pretty much
8 a majority of all the violent SNM members in the
9 state of New Mexico were Level 6. There was other
10 members of other gangs, but it was more SNM than
11 anybody.

12 Q. When you made it down to Level 5, you said
13 that there was tier time. Explain to the jury what
14 tier time is.

15 A. So you get an hour a day you come out, and
16 each individual comes out one at a time. He's
17 strip-searched. And you go out of the tier into the
18 day room area. They come and get the next
19 individual, strip-search them, and take him out,
20 until all six are done. They check you for weapons.
21 They tell you where you can and cannot go. You
22 cannot cross certain lines. And you spend an hour
23 either playing cards or just talking, playing chess.
24 And that's it. Then you have an hour of yard.

25 Q. Okay. And what's an hour of yard?

1 A. So after you do your day room time, the
2 tier, the bottom tier, the top tier comes out, those
3 two tiers. When you go to yard, it's the same
4 setup. One at time, you come out, you're stripped,
5 you're escorted out of the facility for the next
6 person to come out. And both units are escorted to
7 the yard, and you're in cages. They have handball
8 cages, basketball cages, dip bars, pull-up bars.
9 And there is an extra cage where you could run, it's
10 large enough to run. It's like a track. And you go
11 spend your time out there for an hour.

12 Q. So this is not Jurassic Park.

13 A. This is not Jurassic Park.

14 Q. You can actually be with -- contact with
15 other SNM members?

16 A. Yes.

17 Q. Other inmates?

18 A. Yes, ma'am.

19 Q. In your pod?

20 A. Yes.

21 Q. Okay. And in 2011 was there an incident
22 regarding an inmate that was assaulted?

23 A. Yes.

24 Q. Who was that?

25 A. It was Alex Sosoya. They called him

1 Chulo.

2 Q. Was he an SNM Gang member?

3 A. He was an SNM Gang member.

4 Q. And are you aware of his standing within
5 the SNM?

6 A. He had spoken out against the tabla, about
7 the use of drugs, and he didn't like what they were
8 doing. And the tabla put a hit on him.

9 THE COURT: Ms. Armijo. You know, I've
10 got to do that little meeting with Ms. Bean before,
11 so I need to let the jury go. Would this be okay?

12 MS. ARMIJO: Yes, Your Honor. Thank you.

13 THE COURT: Ms. Bean and I have another
14 proceeding we need to take care of before she takes
15 her leave for the evening, so I'm going to let
16 everybody go a little early, so she's not here too
17 late.

18 Thank you for your hard work. See you
19 back at 8:30 in the morning. I appreciate all
20 you're doing for us. Be safe in your travels. All
21 rise.

22 (The jury left the courtroom.)

23 THE COURT: All right. Mr. Blackburn, the
24 Mario Rodriguez opinion on the motion that you
25 filed -- I got an order entered on it. It's

1 document 2119.

2 All right. Y'all have a good evening.

3 See y'all at 8:30.

4 MS. HARBOUR-VALDEZ: Your Honor, can we
5 remind the witness not to discuss --

6 THE COURT: You're on the stand now, so
7 don't discuss your testimony with any other witness
8 or anybody else, lawyers, anybody, until you get
9 back here and you're back on the stand.

10 THE WITNESS: Okay. All right, sir.

11 THE COURT: All right. Y'all have a good
12 evening.

13 And then Mr. Castle and Mr. Cooper, if you
14 want to stay, we'll switch.

15 The Government is covering up on any sort
16 of in camera -- you're covering up those screens
17 when you're coming up?

18 MS. GILBERT: Yes, we are, Your Honor.

19 (Ex parte hearing held.)
20
21

22 April 17, 2018

23 THE COURT: All right. Good morning,
24 everyone. Looks like all the defendants are in.
25 Everybody has got an attorney. The jury is all

1 here.

2 One thing I was going to discuss is, try
3 to resolve this issue with the taint team and this
4 document that Billy Garcia had. I'm wondering if
5 this would be enough for the Government, after
6 meeting last night with Mr. Billy Garcia's
7 attorneys.

8 The document that I have has highlighting
9 in it. Every page, with the exception -- I think
10 there was a blank page -- shows a CM/ECF document.
11 My understanding was that if it was filed, they
12 could leave a document there. They would prefer not
13 to have this document disclosed to the Government
14 because of the highlighting in it, and also
15 because -- it's a public document, but they would
16 not like that work product shown to the Government.

17 Could the Government live with the fact
18 that I have looked at it? Every page has a CM/ECF
19 heading at the top, other than I think there was one
20 page that was just blank, period.

21 Would that be enough of a representation
22 to the Government?

23 MR. BECK: Yes, Your Honor.

24 THE COURT: Okay. All right. So I'm
25 going to -- I think this particular copy, I think we

1 have a copy that's under file, that's either
2 attached to Ms. Bevel's clerk's minutes or it's --
3 is that what we did with it? We just attached it to
4 your clerk's minutes, or did we file it?

5 THE CLERK: Which set of documents?

6 THE COURT: These are the ones -- these
7 are the three documents that we got.

8 THE CLERK: I have two as exhibits, but
9 not the ones to Mr. Garcia. Those aren't exhibits
10 yet to the clerk's minutes.

11 THE COURT: We don't have those? You've
12 got the other two?

13 THE CLERK: Yes.

14 THE COURT: So I'm just going to file this
15 one, if that's all right.

16 MR. COOPER: Sounds good.

17 THE CLERK: So this will be Number 6 to
18 the clerk's minutes.

19 THE COURT: All right. The jury is all
20 here. Anything we need to discuss before we bring
21 the jury in?

22 Mr. Castle.

23 MR. CASTLE: Just briefly. I don't
24 believe any of the parties have told the Court who
25 their advisory witness is that would be excluded

1 from the sequestration rule. Obviously, Agent Acee
2 is the Government's; it's not like we're surprised.
3 But I think it's wise to put that on the record
4 because investigators are sometimes -- we have an
5 investigator who we're designating as our advisory
6 witness. That person may be coming back and forth
7 in the courtroom, and I don't want it to be a
8 violation of the sequestration rule.

9 And I talked to other counsel. We
10 neglected to put that on the record. It would be
11 wise -- I talked to Ms. Armijo. She thinks we
12 should, also.

13 THE COURT: Is that acceptable with the
14 Government?

15 MR. BECK: My understanding is, the rule
16 is invoked, and each party gets one representative.
17 The defendants, that would be their client; the
18 United States, that would be the Government's case
19 agent.

20 So an advisory witness, I mean, if someone
21 is going to come up here and testify to what they
22 investigated, documents they got in, they're a fact
23 witness just like any other and are excluded under
24 the rule.

25 THE COURT: That's my general rule, too.

1 Your client is your witness -- or your
2 representative here, not your investigators. If
3 your investigators are going to be witnesses here,
4 they don't need to be in the courtroom.

5 MR. CASTLE: Well, the Government's client
6 is the United States of America; it's not Agent
7 Acee. The concept of an advisory witness is for you
8 to be able to get advice concerning the
9 investigation that's proceeding in the case. And my
10 client is a party. He's not an advisory witness.

11 THE COURT: If you want to show me some
12 law, I'll take it. But the Government always gets
13 one representative, and your clients are yours. And
14 if you have some law that you can keep fact
15 witnesses in a courtroom after the rule has been
16 invoked, I'll look at it. But I've never seen it or
17 had it happen in the courtroom before.

18 So you've got to make a decision whether
19 you're going to call them or not. All right.

20 Anything else we need to discuss? All
21 right.

22 MS. ARMIJO: Your Honor, if the jury is
23 ready, we don't need to discuss it now. Just
24 something we want to put on the record.

25 THE COURT: She can go ahead and line them

1 up. Go ahead.

2 MS. ARMIJO: Your Honor, I think that Mr.
3 Castellano wanted to clarify about talking to
4 witnesses while they were on the stand.

5 MR. CASTELLANO: Yes, Your Honor. Oh, I
6 was reading something else. But yesterday, the
7 parties asked that the witness not discuss the
8 testimony with the attorneys. I think the rule and
9 the case law says that on cross-examination, the
10 witness should not be speaking to the Government.
11 But I think for purposes of direct examination,
12 that's still allowed.

13 But I agree, typically if the parties ask
14 that a witness not address -- for example, a
15 Government witness not address Government attorneys
16 during cross-examination, I think that's where that
17 rule applies, and we agree that's what the law says.
18 But not for purposes of direct examination. So I
19 just wanted to clarify that.

20 THE COURT: Well, we had an agreement
21 yesterday. Is the Government backtracking from the
22 agreement?

23 MR. CASTELLANO: Well, in a sense, we are,
24 only because that came and went pretty quickly, and
25 we agreed that --

1 THE COURT: Show me your law, and then if
2 you want to backtrack it, then we can discuss that.

3 MR. CASTELLANO: Sure. Understood.

4 THE COURT: All rise.

5 (The jury entered the courtroom.)

6 THE COURT: Good morning, ladies and
7 gentlemen. I appreciate everybody being back on
8 time and ready to go. I appreciate the way you've
9 gone about your tasks. The attorneys and parties
10 have done the same. So I appreciate everybody
11 making it possible for us to start on time and stay
12 on track. I hope you had a good evening. I look
13 forward to working with you today.

14 All right. Is Mr. Rodriguez prepared to
15 return to the witness stand?

16 MS. ARMIJO: He is, I'm assuming. Two
17 minutes? I was just told in two minutes.

18 THE COURT: All right. We can only get so
19 many people through that door, so we have to work a
20 little bit to cooperate.

21 Ms. Harbour-Valdez, one of Mr. Troup's
22 counsel, has two medical appointments this morning,
23 and so I promised her I would make that announcement
24 to you, the jurors. We've got Mr. Davidson back,
25 and we're glad to have him back. He's been taking

1 care of his wife's medical issues, and we're glad to
2 have him with us today.

3 MR. DAVIDSON: Thank you, Your Honor.

4 MS. ARMIJO: Your Honor, I believe there
5 is no objection to admitting Government's Exhibits
6 874 and 875 and Government's Exhibit 610.

7 THE COURT: All right. Mr. Rodriguez, if
8 you'll come up and return to the witness box, I'll
9 remind you that you're still under oath.

10 THE WITNESS: Sure.

11 THE COURT: So 874, 875, and 610. Any
12 objection from the defendants? Not seeing or
13 hearing any objections, Government's Exhibit 874,
14 875, and 610 will be admitted into evidence.

15 (Government's Exhibits 874, 875, and 610
16 admitted.)

17 MS. ARMIJO: Thank you, Your Honor.

18 MARIO RODRIGUEZ,
19 after having been previously duly sworn under
20 oath, was questioned, and continued testifying
21 as follows:

22 CONTINUED DIRECT EXAMINATION

23 BY MS. ARMIJO:

24 Q. Mr. Rodriguez, good morning.

25 A. Good morning.

1 Q. I was told that I need to try and slow us
2 down in talking.

3 A. Okay.

4 Q. So if you see me pause, that's why.

5 A. All right.

6 Q. I believe yesterday we were just about
7 to -- we were talking about Alex Sosoya --

8 A. Right.

9 Q. -- when we ended for the day. And so
10 from -- let's start again with that. Who is Alex
11 Sosoya?

12 A. He was another SNM member, Alex Sosoya;
13 called him Chulo.

14 Q. Chulo?

15 A. C-H-U-L-O, Chulo.

16 Q. And did you know Chulo?

17 A. I did. When I came to the SNM, I knew
18 him.

19 Q. Okay. So that would have been by 2006 you
20 knew him?

21 A. 2005, 2006, yes.

22 Q. Okay. And when -- were there some issues
23 that, throughout the year, up until 2011, that you
24 were aware of that Chulo was causing?

25 A. When I came into the SNM, he was already

1 in bad standings with the tabla. And as I said
2 before, I was close to Tommy Valdez, Conejo, who was
3 a friend of Chulo, and I got put into the
4 information that was going around about him. Yes,
5 he was in a bad standings.

6 Q. I guess this would be a good time to talk
7 about it. I think we talked about the rules
8 yesterday and people with bad standing. Are there
9 politics in the SNM?

10 A. Yes, there are. There is -- I think
11 yesterday when you were explaining, asking me about
12 the rules, I think I kind of misled the jury when
13 saying, as far as you don't -- you're not sat down
14 by them and said, "This is Rule Number 1, this is
15 Rule Number 2, or Rule Number 3."

16 They'll come to you and will tell you
17 things like, "How often are you working out? Make
18 sure you're working out three or four times a week.
19 Do you have a weapon? No? We'll get you a weapon."

20 So those are kind of what you're supposed
21 to be doing. You're supposed to be studying.
22 You're supposed to be making sure all your carnals
23 are in good standing, and who's not in good
24 standing. You're supposed to be aware of those
25 issues. Politics go on, very common in the SNM, for

1 my time being in the SNM.

2 Chulo was politicking against the tabla,
3 and -- go ahead.

4 Q. And so even though there is politicking,
5 that just means it's like any other organization?

6 A. Pretty much. Just like a business. You
7 go into a business, and you're obligated to do
8 certain things. If, I think, you go play something
9 on Facebook, your business will be mad at you. If
10 you represent yourself in the wrong light, you
11 reflect on the SNM, and the SNM is going to get mad
12 at you. If you're speaking out against the tabla,
13 that's one thing that you're not supposed to be
14 doing. You're supposed to be taking orders from the
15 tabla and listen to their advice.

16 Q. You said a couple of things I want to
17 touch on there. "Carnal."

18 A. Right.

19 Q. You used that word. What does that mean?

20 A. It's "brother" in Spanish.

21 Q. And is that something that is -- that the
22 SNM uses?

23 A. Yes. When you're a member of the SNM, we
24 refer to each other as "carnals" or "homies." When
25 two SNM members are speaking about carnals, we'll

1 say "the homies." That's the group of the SNM, the
2 lower tier under the tabla. But "carnals" is what
3 we refer to each other as.

4 Q. Would you ever, as an SNM member -- and
5 let's say there is another inmate who is not an SNM
6 member or associate or an SNM member. Would you
7 ever refer to them as "carnal"?

8 A. No. When something goes like that -- say
9 myself and another carnal are in the yard, and there
10 is an individual that isn't a carnal, I'll introduce
11 him to one of the homies, say, "Hey, this is one of
12 the homies right here."

13 And he'll say, "Is he a carnal?"

14 I'd say, "No, he's just a homie; he's just
15 ferme."

16 So it shows right there he's not a member
17 of the SNM.

18 Q. So that term has special meaning?

19 A. It has special meaning, yes.

20 Q. Between SNM members?

21 A. Yes, ma'am.

22 Q. Okay. You talked about studying.

23 A. Right.

24 Q. Were you provided actual materials to
25 study for the SNM?

1 A. When I became a member of the SNM, there
2 was, I think at a lunch hour, when the officer was
3 passing me trays. I was -- received an envelope, a
4 manila envelope packed with handwritten and copies
5 of different material from Arturo Garcia, and I
6 studied it. It was The Art of War; Machiavelli, The
7 Prince; 48 Laws of Power. Just a variety of
8 philosophy that is contorted into enabling your mind
9 to become more soldier status within the SNM.

10 Q. And when you did that, you put your hands
11 out --

12 A. Yes.

13 Q. -- to like show a thick, I don't know,
14 maybe three or four inches?

15 A. Yes.

16 Q. Is that correct, how thick it was?

17 A. Yes, ma'am.

18 Q. And the CO gave that to you?

19 A. A CO passed it to me, yes.

20 Q. That CO wasn't supposed to pass it to you,
21 was he?

22 A. No. They're not supposed to, no.

23 Q. Okay. And did you study that?

24 A. I did.

25 Q. Now, that was given to you by who?

1 A. Arturo Garcia.

2 Q. Now, so there is politicking, and Alex
3 Sosoya was not in good standing. Let's go now to
4 2011. Where are you within the Corrections
5 Department?

6 A. I was transferred to PNM South facility,
7 Level 5, in Santa Fe.

8 Q. And in Level 5 -- now, at the South, are
9 you able to actually have rec time with other
10 members?

11 A. Yes. After orientation period, you're
12 able to come out and have tier time and yard, one
13 hour each.

14 Q. And were you being housed with Robert
15 Martinez?

16 A. Yes, I was.

17 Q. Remind the jury again what his nickname
18 is.

19 A. Baby Robert.

20 Q. And was he on the tabla?

21 A. Yes, he was.

22 Q. Now, at some point did you make a decision
23 in reference to Alex Sosoya and Robert Martinez?

24 A. When I was in PNM North facility, Level 6,
25 I had a yard with Robert Martinez, and he explained

1 to me that there was already a green light on him.
2 And I told him, "If I'm ever around you and he's
3 there, then I'll give you squina. I've got your
4 back."

5 Q. What is squina?

6 A. It's I got your back; I'm in your corner;
7 you can rely on me.

8 Q. All right. Now, Baby Rob, is he your age
9 or is he older than you?

10 A. He's older.

11 Q. And describe him for the jury as far as,
12 is he a big guy or a small guy?

13 A. He's about 5-7, 5-8, thin build. He's a
14 little guy. He's not very big.

15 Q. Are you bigger than him?

16 A. Yes, ma'am.

17 Q. By this time, you had already done the
18 Robert Esparza incident, correct?

19 A. Yes. I had stabbed Robert Esparza, yes.

20 Q. In 2011, what were you known for in the
21 SNM?

22 A. Violence. From my history within the
23 prison system and the county jail system, it was
24 violence. I was known for violence.

25 Q. Were you a soldier?

1 A. I was a soldier, yes.

2 Q. So did -- and you said this conversation
3 that you had with Baby Rob was when you were
4 actually at the North; is that correct?

5 A. The North facility in solitary confinement
6 cages.

7 Q. Jurassic Park --

8 A. Jurassic Park, yes, ma'am.

9 Q. -- we've heard about?

10 A. Yes, ma'am.

11 Q. So then you get to the South in 2011.
12 Does the opportunity present itself to actually give
13 Baby Rob squina?

14 A. Yes, it did.

15 Q. Explain to the jury.

16 A. So Alex Sosoya arrived, and there was
17 instant tension in the pod. And I could see that a
18 lot of carnals were -- there was anxiety in the air,
19 I guess. And so I began speaking to Alex Sosoya, to
20 make him feel comfortable. And when I came off
21 orientation about two days after, I began plotting
22 with Robert Martinez on how to kill Alex Sosoya and
23 where we would do it. We obtained weapons from my
24 hot pot. I sawed down the plastic from the hot pot,
25 which is to heat up water.

1 Q. So when you're saying "weapons," you're
2 talking about making shanks?

3 A. Yes.

4 Q. And the hot pot, is that something that
5 you had in your cell?

6 A. Yes. It's a privilege you have when
7 you're on a certain level. You're able to have a
8 hot pot.

9 Q. So you used part of that hot pot to make a
10 shank?

11 A. I got it and I melted -- I made a flame, a
12 fire, and I melted it down to a shank.

13 Q. Okay.

14 A. And I gave one to Robert, and I told him,
15 "Be careful with it because it's kind of flimsy in
16 the middle."

17 He decided to dispose of that and get a
18 razor blade and strap it to a spoon. We --

19 Q. And so -- and was that prior to anything
20 happening with Alex Sosoya?

21 A. Prior to --

22 Q. Yes, prior to any contact with him?

23 A. No -- yeah, this was prior to him being
24 off orientation.

25 Q. So was he on orientation, or were you?

1 A. When he arrived, I was on orientation for
2 two more days.

3 Q. Okay. And then was he on orientation?

4 A. He was on orientation for seven days. But
5 they extended him to 10 days because the STIU was
6 worried that he was going to get hit.

7 Q. And where are you when you're in
8 orientation, at least on that particular occasion?

9 A. You're locked in your room, your cell, on
10 the same tier.

11 Q. So instead of -- so it's not a different
12 place? You're just basically in the cell that you'd
13 be assigned to?

14 A. Yes.

15 Q. But you can't come out?

16 A. You can't come out. They want to put you
17 on an orientation period to see how the atmosphere
18 is around you, who is associating with you, and if
19 you're going to be able to come out there.

20 So once the seven days come, you go to a
21 classification hearing. They say, "Okay, you're
22 released off orientation, and you're able to come
23 out."

24 Q. Okay. So you were doing your last two
25 days of orientation when he got there?

1 A. That's correct.

2 Q. And then he had to do a total of 10 days;
3 is that correct?

4 A. Right. That's correct.

5 Q. So then what happens after he's released
6 from orientation? And you just talked about how you
7 and Baby Rob had shanks ready?

8 A. Right. We let him come out for maybe
9 three to four days, to get him comfortable and kind
10 of trick him into thinking he was okay. And as
11 those days went on, we plotted and furthered where
12 we were going to do it and how we were going to do
13 it.

14 Q. What was the plan?

15 A. To kill him. To stab him in the yard and
16 attempt to kill him.

17 Q. Okay. And I guess in the yard -- when you
18 say you were going to rec time, where were you going
19 to rec?

20 A. There is three cages. One has a
21 basketball court; the next one next to it has a
22 handball court; and the third one has a track in it.
23 So we were going to those yards.

24 Q. So when you say "cages," they're actually
25 yards that have fencing around it?

1 A. They're nearly as big as this courtroom,
2 and there is fencing around them, yes.

3 Q. So what happened?

4 A. So we were going to do it on a Monday. We
5 went on lockdown because there was a situation going
6 in one of the other units. So I think it ended up
7 on a Friday. I got my weapon, I got an Ace bandage,
8 and I strapped it to my knee, as tight as I could,
9 and I put a black knee brace over it, so when I came
10 out to strip search, I could just lift up and it
11 looked like a knee brace was covering just my flesh.
12 So --

13 Q. And is that where you hid your weapon?

14 A. That's where I hid my weapon, yes. And we
15 went to yard. And we wanted to do it in the
16 handball cage, but we ended up in the basketball
17 cage. So we played basketball with him. We tried
18 to wear him down. And he's about 6-2, 6-3. We wore
19 him down a little bit. And he got into an argument
20 with one of the carnals in the adjoining cages, and
21 I jumped the gun and went after him. And Baby Rob
22 intervened, got involved. We took him to the floor
23 and began stabbing him.

24 Q. Okay. When you say you "jumped the gun,"
25 were you supposed to wait longer until he had played

1 more basketball?

2 A. Rob had wanted to wear him down more, yes.

3 Q. And you jumped the gun because you saw
4 that he was fighting with somebody?

5 A. He called one of my carnals a bitch, in
6 another cage. And he just said, "I'm tired of this
7 fucker. He's acting like a bitch."

8 And I just kind of said, "Fuck, we're
9 going to stab him anyway, so let's do it."

10 Q. So what did you do?

11 A. I attacked him and began stabbing him, and
12 pushed him up against the fence where Robert got
13 involved. I lost my weapon. When he took off to
14 run, he tripped. And when he tripped, he braced
15 himself, and that happened to be my weapon. He
16 picked up the weapon. I grabbed him by the waist,
17 lifted him up, and dumped him on his head. I got
18 the weapon, pulled it behind his back. And Robert
19 sliced his neck.

20 And then we drug him to the other cage. I
21 got him in like a full Nelson, and I was trying to
22 get Robert to --

23 Q. What do you mean by "full Nelson"?

24 A. I stretched his arms back, exposing his
25 neck.

1 Q. And what was the purpose of that?

2 A. So Robert could slice the neck further.

3 Q. Okay.

4 A. Then we continued assaulting him. Robert
5 ended up getting shot with a canister and I guess is
6 going unconscious. I remained fighting with Alex
7 Sosoya. I had his eyeball in one of my hands. I
8 tried to rip his eyeball out. I bit off his ear --

9 MS. TORRACO: Objection, Your Honor. How
10 is this relevant?

11 THE COURT: Overruled.

12 Q. Go ahead.

13 A. So we continued in that. I got pepper
14 sprayed. They were shooting -- I think they used
15 over 15 different types of nonlethal rounds, and
16 called for lethal rounds towards the end.

17 Q. So while this is going on, you and Robert
18 Martinez are attacking Alex Sosoya, and Corrections
19 is trying to get you to stop?

20 A. That's correct, yes.

21 Q. Were they yelling at you?

22 A. They were shooting from three different
23 shotguns, and disposing canisters of concussion
24 grenades.

25 Q. Okay. Are you aware from your experience

1 as far as being -- attacking people, are they -- the
2 "they" being Corrections Department -- do they
3 usually start with nonlethal rounds? You used that
4 term.

5 A. Yes. They usually begin with pepper
6 spray, and go up the chain of -- up to lethal.

7 Q. Okay. And so, in this instance, during
8 the course of this attack, what do you believe was
9 actually sent and hit you?

10 A. Nothing -- well, I don't know if I was hit
11 at that time, while I was going through the process,
12 but I ended up having -- from the concussion grenade
13 that exposes rubber pellets, I was hit with one of
14 those. And the concussion grenade went off right
15 there next to me and Sosoya. I got up and kicked
16 him twice, one time. And then I went to kick him
17 another time, and I couldn't see him because I was
18 pepper sprayed.

19 I left the scene right there, and I went
20 and laid down and got handcuffed.

21 Q. And you mentioned that Baby Rob was hit by
22 a concussion grenade?

23 A. He was hit by -- I think they call them a
24 40 millimeter canister, that shoot out of like a
25 terminator gun.

1 Q. Okay. Did he have injuries as a result of
2 that?

3 A. Yes, he had swelling of the brain. And
4 they nearly had to take a piece of his skull out so
5 the brain didn't over-swell.

6 Q. Did he end up going to the hospital?

7 A. Yes.

8 Q. Did you go to the hospital?

9 A. No, I did not.

10 Q. Did Alex Sosoya go to the hospital?

11 A. Yes, he did.

12 Q. You mentioned you bit off his ear.

13 A. Right.

14 Q. Did you ever -- did Alex Sosoya live?

15 A. Yes. He lived, yes.

16 Q. And did he go to the hospital?

17 A. Yes. He went to the hospital, yes.

18 Q. Did you ever see Alex Sosoya after that?

19 A. No. I haven't seen him after that, no.

20 Q. Now, as a result of that -- and you
21 mentioned that -- did you hear that they were
22 getting lethal rounds out?

23 A. Yes, there was -- after everything
24 happened, one of the COs came to me and was telling
25 me, "What the fuck is wrong with you? They were

1 going to shoot you." And I didn't believe it. And
2 then I came across the reports where they called for
3 lethal rounds right before I had given up, yes.

4 Q. But that didn't have to be used on you?

5 A. It wasn't used, no.

6 Q. So did you -- was that ever charged by the
7 State of New Mexico?

8 A. It was not.

9 Q. Did you ever receive disciplinary
10 consequences from that, from the Corrections
11 Department?

12 A. Yes, I did.

13 Q. What were the consequences?

14 A. It was -- I was downgraded from -- I think
15 it was -- I don't recall what it was downgraded
16 from, but I think it was a battery charge. I got
17 nine months of disciplinary. And I think that was
18 about it.

19 Q. When you say nine months disciplinary,
20 that's not added to your sentence; correct?

21 A. No. But you don't earn good time when
22 you're on disciplinary. So it does affect your
23 sentence.

24 Q. And I guess -- I'm assuming, but you tell
25 us -- were you sent back up to the North?

1 A. I was sent that day, yes.

2 Q. And that was when?

3 A. 2011, the day of the incident.

4 Q. Now, you were there. Eventually, at some
5 point, do you change facilities and work your way
6 down again?

7 A. I do.

8 Q. And when did that start to occur?

9 A. After my disciplinary, I began doing the
10 program, just as we're required to. We're required
11 to stay out of trouble as much as you can, so you
12 can get back out. I did that, followed all the
13 rules of the penitentiary.

14 And I filed a habeas corpus to try to get
15 out again. It was granted. Once you file a habeas,
16 they don't want it to go to court, so they'll
17 release you, then you drop your habeas. That's what
18 happened with me. I went to -- maybe two-and-a-half
19 years later, I went back to the South.

20 Q. Okay. So two-and-a-half years later, you
21 go back to the South, which is still at PNM?

22 A. PNM, yes.

23 Q. And do you eventually make your way down
24 to Southern?

25 A. I do.

1 Q. When you're at South, you're Level 5?

2 A. Level 5.

3 Q. Do you do well in Level 5?

4 A. I did.

5 Q. Then did you make your way down to
6 Southern?

7 A. Yes, I did.

8 Q. And when was that, approximately?

9 A. I think it was in December of 2013.

10 Q. And when you went to Southern, then you
11 were then reclassified as Level 4?

12 A. That's correct.

13 Q. And when you went to Southern, where were
14 you housed?

15 A. In 1-A blue pod.

16 Q. And is that an SNM pod?

17 A. What? 1-A blue pod?

18 Q. Yes.

19 A. Yes, 1-A blue pod. The whole 1-A unit is
20 the SNM unit.

21 Q. All right. And when you were there, were
22 you still -- when you first got to Southern, what
23 was your position then with the SNM?

24 A. I had become an influential member at that
25 time, but I was still a soldier.

1 Q. All right. And did you -- if we could
2 display Exhibit 649. All right.

3 Mr. Rodriguez, this has been admitted, and
4 it is an aerial view of Southern New Mexico
5 Correctional Facility. Are you able to recognize
6 it?

7 A. Yes.

8 Q. I'm assuming you've never seen it from the
9 air, but can you tell, based on the ground levels,
10 as far as based on your time that you spent there.

11 A. Yes. I know where I was at, yes.

12 Q. Okay. And do you see 1-A there on the
13 Government's Exhibit 649?

14 A. Yes, I do.

15 Q. And where is it?

16 A. It's down here towards the left.

17 Q. All right. There is something that's
18 labeled "1-A" and I'm going to circle it. Is that
19 it?

20 A. That's it.

21 Q. And was that whole unit SNM?

22 A. Yes, it was.

23 Q. And then within that unit, were there
24 three different pods?

25 A. Yes, there is three different pods in that

1 unit.

2 Q. And which pod were you in?

3 A. I was in blue pod.

4 Q. Okay. And is blue pod, if you kind of
5 enter in this way, will blue pod be like the first
6 pod?

7 A. Yes. It's right there where you circled.

8 Q. And then did it go to yellow pod, being
9 kind of in the middle?

10 A. Yes.

11 Q. And then there was green pod, correct?

12 A. That's correct.

13 Q. Now, when you got there, you indicated --
14 did you have some friends there that you were close
15 to within SNM when you got there?

16 A. Yes, I did.

17 Q. And who was that?

18 A. Timothy Martinez, Daniel Sanchez. I was
19 kind of close to Javier Molina. Jerry Montoya,
20 Benjamin Clark.

21 Q. Now, was Benjamin Clark in a different
22 pod?

23 A. Yes. He was in green pod.

24 Q. Okay. Based on the fact that you are
25 Level 4, how is it that you're able to do your

1 recreation time?

2 A. You go to a phone yard, or you go to the
3 big yard that was on the screen. And I think now
4 there is three different cages that they could take
5 you out at one time.

6 Q. When you say "cages," again, we're talking
7 large cages, not the individual cages; is that
8 correct?

9 A. That's correct, yes.

10 Q. Okay. And can you see the cages on this?

11 A. I don't think -- they're not in this
12 picture. I don't think the cages were built at this
13 time that the picture was taken.

14 Q. Okay. All right. So then you -- Daniel
15 Sanchez, who was he, as far as within the SNM?

16 A. He was the shot caller right there at the
17 Southern facility.

18 Q. When you say "shot caller," what's a shot
19 caller?

20 A. He's the one that handles all the SNM
21 hits, or anything that's going on wrong within with
22 the SNM, or correct, he's a part of it.

23 Q. Okay. And does every facility have a shot
24 caller?

25 A. Every facility has. There was a tabla

1 there, but I just recognized Daniel Sanchez as who I
2 listened to there.

3 Q. Okay.

4 A. Every facility has -- if I was of higher
5 status than Daniel Sanchez when I arrived, I would
6 take over his position.

7 Q. Okay.

8 A. Since I wasn't, I fell under him when I
9 got there. Each facility has a shot caller in
10 place. But a higher ranking member could come and
11 take over that facility, yes.

12 Q. Okay. So even if you were the highest one
13 in that facility, then you would be there. But if
14 Daniel Sanchez came after you --

15 A. Right.

16 Q. -- since he was higher up in the
17 organization, then he would take over?

18 A. That's correct.

19 Q. So you mentioned Javier Molina. Who is
20 he?

21 A. He was an SNM member. I think I met him
22 when I got brought in, when I was offered to be
23 brought into the SNM. He was in the yard the day
24 when Arturo offered me membership in the SNM.

25 Q. And did he support your membership into

1 the SNM?

2 A. Yes.

3 Q. He was an SNM member?

4 A. He was an SNM member, yes.

5 Q. Had you learned, prior to even coming down
6 to Southern, that he was not in good standing?

7 A. Yes, I had.

8 Q. And how did that impact you, as far as he
9 was not in good standing? Did you have any ideas,
10 if you were called to do anything, what you would
11 do?

12 A. Yes. I would kill him.

13 Q. And what was your understanding about why
14 he was not in good standing?

15 A. Because he had given the Las Cruces Police
16 Department information on a robbery or something
17 like that.

18 Q. Is that allowed?

19 A. No.

20 Q. What at this time -- and we're now talking
21 about 2013, 2014 -- what was required before an
22 actual hit was to be enforced?

23 A. Paperwork. You had to have --

24 Q. Tell the jury what paperwork is.

25 A. All right. When you're arrested, you're

1 given supplemental reports, and it has interviews of
2 investigation, and paperwork, which we describe is a
3 supplemental report, where an individual gives a
4 statement to the police. And that is taken out of
5 the discovery and passed around to people, to
6 verify. So certain members need to see the
7 paperwork in order for the hit to go through.

8 Without paperwork, you can move on a good
9 carnal and kill someone that's in good standing just
10 because someone tried to switch him up. So it's
11 necessary to kill someone in the SNM.

12 Q. That was a requirement as of 2014?

13 A. That's a requirement, yes.

14 Q. Now, at some point did paperwork arrive on
15 Javier Molina?

16 A. Yes.

17 Q. And was that in March of 2014?

18 A. It was in March 2014, yes.

19 Q. And did you receive the paperwork from
20 somebody?

21 A. I received the paperwork from Carlos
22 Herrera, which originated from Lupe Urquizo.

23 Q. Carlos Herrera. What unit was he in?

24 A. He was in yellow pod.

25 Q. The same 1-A unit, but in a different pod?

1 A. Same unit with the -- conjoined to the
2 blue pod.

3 Q. And did he pass you the paperwork?

4 A. Yes, he did.

5 Q. How did he pass you the paperwork?

6 A. Under the emergency exit door in between
7 pods.

8 Q. And what did you do with the paperwork
9 when you received it?

10 A. I got the paperwork. And me and Daniel
11 Sanchez sat down to read it, where Daniel Sanchez
12 called the hit, said, "It's done." And I took it
13 as: We're going to kill him.

14 I took the paperwork back to Carlos
15 Herrera, and began plotting with Daniel Sanchez on
16 how the hit was going to go down.

17 Q. Was there a plan eventually devised in
18 order to kill Javier Molina?

19 A. Yes.

20 Q. And who was the one that picked the
21 persons to, in fact, do the murder?

22 A. Daniel Sanchez.

23 Q. And did he give you a task to do in
24 reference to that?

25 A. Yes.

1 Q. Was your task to -- why don't you tell the
2 jury what your task was.

3 A. My task was to provide the weapons, make
4 the weapons, and direct Timothy Martinez and Jerry
5 Montoya to -- first, Timothy Martinez to go knock
6 him out unconscious, which it was changed to choking
7 him out to when he was unconscious. And I gave
8 Jerry Montoya the weapon and told him that Dan
9 wanted him to hit Molina. And --

10 Q. And did you, in fact, make the weapons?

11 A. I made the weapons, yes.

12 Q. What were the weapons made out of?

13 A. Out of Rudy Perez's walker.

14 Q. Did you take a piece from the walker?

15 A. I took a piece that was about maybe 22
16 inches in length and pretty thick. And I broke it
17 into three, and made two weapons out of it.

18 Q. And were those weapons then given to --
19 eventually to Jerry Montoya and Jerry Armenta?

20 A. Yes, they were.

21 Q. And were you to oversee -- make sure it
22 was done?

23 A. Yes, I was there. I was in the cell when
24 Timothy Martinez began to choke him out. And I
25 called for Jerry Montoya and Jerry Armenta to enter

1 the cell to begin stabbing him.

2 Q. Did that actually happen?

3 A. That actually happened. Then I was also
4 tasked with taking care of Jerry Montoya's weapon,
5 to dispose of it.

6 Q. And did you do that after it happened?

7 A. Yes, ma'am.

8 Q. Where was Daniel Sanchez?

9 A. He was sitting in front of the camera,
10 when he was tasked to take care of Jerry Armenta's
11 weapon, which he did not do.

12 Q. And was Javier Molina killed?

13 A. Yes, he was.

14 Q. Did you actually see Javier Molina -- was
15 the plan ever for Javier Molina to leave the cell?

16 A. No, he was never supposed to leave the
17 cell. He was supposed to die in the cell, and then
18 put him in the bed after the fact.

19 Q. Okay. Now, when this happened, did this
20 happen during tier time?

21 A. Yes. It happened after the 4:00 count,
22 which is 5:00 tier time. It was open unit at that
23 time.

24 Q. Okay. Explain to the jury what you mean
25 by 4:00 count. What happened at 4:00 count at that

1 time?

2 A. Okay. 4:00 count is when I began breaking
3 down the weapons and sharpening them. It's one hour
4 when the whole facility locks down and a CO goes to
5 every pod, counting, to make sure everyone is there,
6 everyone is alive. And I think they do it three
7 times a day, and maybe twice at night.

8 Q. Okay. So you have to actually be in your
9 cell at that time?

10 A. Yes, with the door locked. The door is
11 locked all the time.

12 Q. Everyone is on lockdown for a count?

13 A. Yes.

14 Q. Does it usually take about an hour?

15 A. Takes about an hour, yes.

16 Q. So doors open back up at around 5:00?

17 A. Yes, ma'am.

18 Q. And are you all -- are inmates supposed to
19 be -- cell doors supposed to be just left open so
20 inmates can come in and out, or are they supposed to
21 be shut?

22 A. They're supposed to be shut.

23 Q. And then people can either be in their
24 cells or out in the open; is that right?

25 A. That's correct.

1 Q. And so then, was Javier Molina -- you
2 indicated he was not supposed to leave the cell?

3 A. He was not supposed to leave the cell, no.

4 MR. BLACKBURN: Your Honor, I'm going to
5 object to the leading nature of the questions.

6 THE COURT: Try not to lead him.

7 MS. ARMIJO: Sorry, Your Honor.

8 Q. Okay. So what happened when you -- did
9 the plan -- did the plan go through as it was
10 originally designed?

11 A. Originally designed, no, but the result
12 was to kill him. And that ended. But the plan
13 didn't go as perfect as we had wanted it, no.

14 Q. Okay. What went wrong?

15 A. They let him get out of the cell. They
16 let him get up off the floor, and didn't continue
17 stabbing him. And when he got up, when Javier
18 Molina got up, they backed up off him. And when I
19 walked up, I told them, "Make sure, don't let him
20 out of the cell."

21 He heard me, and he bulldozed through them
22 and ran out onto the tier, where they continued
23 stabbing him in the front of the door area, the exit
24 to the pod.

25 Q. And Javier Molina, was he a big guy?

1 A. He was decent size.

2 Q. And so when he was running out of the
3 cell, did he say anything to you?

4 A. Yeah. He said, "You got me, you got me.
5 All right, carnals."

6 And I yelled at him, "You're not our
7 fucking carnal."

8 Q. Why did you say that to him?

9 A. Because he had ratted.

10 Q. And so was he in fact killed?

11 A. Yes. He died, I believe, on the front
12 door area of the unit, of the pod.

13 Q. And who were the people that stabbed him?

14 A. Jerry Montoya and Jerry Armenta.

15 Q. Were they -- was there a lockdown after
16 that?

17 A. Yes. There was a lockdown immediately
18 after that, where they came, and the nurse took the
19 body out of the pod.

20 And I locked down and began arguing with
21 the CO, because there was blood in front of my door.
22 I got a hand sanitizer and water and threw it out to
23 dilute the blood. And then I was escorted out of
24 the unit.

25 Q. Was everybody escorted out of the unit

1 because it was a crime scene?

2 A. Everyone was escorted outside the unit in
3 a fashion that isn't usually the way it was. But
4 they didn't want anyone to take off their clothes.
5 They didn't want to disturb anything. So they took
6 everyone out just as they were.

7 Q. And as a result of this, were you -- did
8 you stay at Southern?

9 A. No. I was emergency transported the very
10 next day.

11 Q. Where were you transported to?

12 A. Myself, Mauricio Varela, and Daniel
13 Sanchez were emergency transported to PNM North
14 facility.

15 Q. Mauricio Varela. Is he an SNM Gang
16 member?

17 A. Yes, ma'am.

18 Q. And where is he from?

19 A. He's from Silver City, from my hometown.

20 Q. Is he considered a leader?

21 A. He's a leader of the China Town, him and
22 Eddie Ortega.

23 Q. China Town. That was, I think you said,
24 your rival gang?

25 A. That's a rival gang, yes.

1 Q. But once you're both in SNM, did you get
2 along with him?

3 A. We got along, yes.

4 Q. And did he have a position of authority of
5 some type within the SNM?

6 A. He had influence. He wasn't really in a
7 leadership position, but he had been in prison for a
8 very long time, and he had influence within the
9 tabla, yes.

10 Q. So the three of you were transported up
11 back to PNM?

12 A. Yes.

13 Q. Eventually, were others transported back
14 up to PNM?

15 A. I think maybe after maybe nine to 10
16 months, Timothy Martinez, Jerry Armenta, and Jerry
17 Montoya were transported into PNM North facility.

18 Q. Do you know if they were charged -- if
19 anybody was charged by the state initially?

20 A. Yes. Myself, Jerry Armenta, and Jerry
21 Montoya were charged.

22 Q. Okay. What were Jerry Armenta and Jerry
23 Montoya charged with?

24 A. They both got first degree; weapon; I
25 think possession of a weapon. And I got tampering

1 with evidence, conspiracy to tamper with evidence,
2 and possession of a weapon.

3 Q. Were they charged with murder-related
4 charges?

5 A. Yes, first degree murder.

6 Q. Okay. When you said "first degree," it's
7 first degree murder?

8 A. Right.

9 Q. Were you charged with first degree murder?

10 A. No, not at the beginning stages. But my
11 charges were about to get amended before the feds
12 picked us up, yes.

13 Q. Okay. And this is -- this happened in
14 March of 2014?

15 A. That's correct.

16 Q. And then was that case pending?

17 A. It was pending.

18 Q. And were eventually you housed with the
19 two Jerrys, I should say, Armenta and Montoya?

20 A. Just Montoya.

21 Q. So did he come up to PNM, as well,
22 eventually?

23 A. After -- eventually, after maybe nine or
24 10 months at the Southern facility, he eventually
25 came up to the North facility, yes.

1 Q. Now, while you were pending trial, did you
2 ever come up with pending trial in the state on
3 your -- what were the charges again?

4 A. Mine?

5 Q. Yes.

6 A. It was tampering with evidence, conspiracy
7 to tamper, and possession of a weapon.

8 Q. Okay. And what was the basis of that?

9 A. That I conspired to dispose of the weapon;
10 that I had possession of the weapon; and I did
11 tamper with evidence.

12 Q. Okay. Was that after the murder?

13 A. It was after the murder, yes.

14 Q. Did you, in fact, take somebody's weapon?

15 A. Jerry Montoya, after they were done
16 stabbing him on the lower front of the door area at
17 the unit, he flicked the weapon up to me on the top
18 tier. I picked it up, and I took it to the shower,
19 where I got a razor blade. I sliced the handle off
20 it, and I began bending the weapon on my shin area
21 to fit into the shower drain, because the shower
22 drain goes as an L. So I shoved it down the shower
23 drain.

24 Q. And was that found by police?

25 A. It was found, yes.

1 Q. So that's the basis for the charges that
2 you had?

3 A. That's correct.

4 Q. At some point, when this was pending, did
5 you actually try -- did you write an affidavit of
6 any type? I guess I shouldn't say "affidavit." Did
7 you try and write a statement to assist others?

8 A. Jerry Montoya and Jerry Armenta and
9 Timothy Martinez were coming up with, I guess, a
10 plan for defense to try to get Jerry Montoya off.
11 He requested if I could write something for him,
12 based on the discovery and the disciplinary reports.
13 I took facts out of the case and twisted them in a
14 way that looked like a plausible defense strategy.

15 And when I sent it to him, he sent it back
16 to me and asked if I could write something about the
17 altercation he had with Javier Molina at the stairs.

18 Q. Okay. And when you say "he," who are you
19 referring to?

20 A. Jerry Montoya.

21 Q. Okay. So what was the point of this
22 document?

23 A. To, I guess, help their plan. I didn't
24 know what their plan was. But I told him I wasn't
25 going to testify for him, and that I would help him

1 in any way I can other than that. The plan was to
2 get Jerry Montoya off.

3 Q. And so did you write a document to help
4 Jerry Montoya?

5 A. Yes, I did.

6 Q. And I guess I should ask this: Jerry
7 Montoya, Jerry Armenta, were they SNM Gang members?

8 A. Yes, ma'am.

9 Q. Timothy Martinez, SNM Gang member?

10 A. Yes, ma'am.

11 Q. And then did -- at some point, were your
12 charges dismissed?

13 A. Yes, they were.

14 Q. Do you recall approximately when that was?

15 A. I think it was like maybe two or three
16 weeks before December 3rd.

17 Q. What happened on December 3rd?

18 A. The FBI picked us up, all -- indicted us,
19 all the SNM.

20 Q. Okay. Where were you at that time?

21 MR. SINDEL: Could we have a year, please?

22 Q. I'm sorry. What year was that?

23 A. 2015, I think.

24 Q. Okay. And you mentioned December 3rd?

25 A. December 3rd, yes.

1 Q. And was that a Friday -- or actually, a
2 Thursday?

3 A. I don't remember.

4 Q. Okay. And were you up at PNM?

5 A. I was at PNM North facility in 3-A Q-pod.

6 Q. Did they pick up others at the same time?

7 A. Yes. They pretty much picked up the whole
8 pod I was in.

9 Q. Now, you said you were picked up on
10 charges; is that right?

11 A. Yes.

12 Q. What were you -- were you charged just in
13 one case, or two cases?

14 A. I was charged on two indictments.

15 Q. Okay. And was one of them called United
16 States v. Varela?

17 A. Yes.

18 Q. What was that, those charges in reference
19 to?

20 A. My case?

21 Q. Yes.

22 A. It was in reference to the stabbing of
23 Alex Sosoya, Chulo, in 2011.

24 Q. And was Robert Martinez charged with you
25 in that incident?

1 A. Yes. That was my co-defendant.

2 Q. And separately from that, were you also
3 charged in a different case?

4 A. Yes.

5 Q. Was that United States versus DeLeon,
6 et al.?

7 A. That's correct.

8 Q. Did you end up pleading guilty?

9 A. I did.

10 Q. Now, since the Varela case -- you
11 mentioned it had Robert Martinez in it. Did it have
12 two other SNM Gang members, as well, in reference to
13 a different incident?

14 A. Yes. It had David Calbert and Mauricio
15 Varela for another 2011 stabbing that they were
16 involved in.

17 Q. Okay. And eventually -- and was that case
18 actually set to go to trial?

19 A. Yes, it was.

20 Q. And when, approximately, was that?

21 A. Somewhere in late October, early November
22 of last year.

23 Q. And had everybody else pled but you?

24 A. Everyone else pled but me, yes.

25 Q. And were you planning on going to trial?

1 A. I was planning on going to trial, yes.

2 Q. Did you decide to plead guilty?

3 A. I decided to plead guilty, yes.

4 Q. Was it an easy decision for you?

5 A. No.

6 Q. Why not?

7 A. Because I was a gang member. I was a gang
8 member all my life. I was an SNM member. And when
9 I joined the SNM, the guys who vouched for me, I
10 always told them that no matter what, I would never
11 bring their name lower or degrade their name in any
12 way. And with doing what I'm doing, I betrayed
13 Arturo Garcia, who blessed me into the SNM and gave
14 me the opportunity to be an SNM member. I went
15 against everything that I've done in my life. And
16 it wasn't easy. I've lost a lot for it.

17 Q. All right. I'm going to show you Exhibit
18 Number 610, which has been admitted into evidence.
19 If I could see the first page. Is this the first
20 page of your plea agreement?

21 A. Yes.

22 Q. And here at the top, I'm circling -- it
23 has two cause numbers. Are those both cases that
24 you were indicted on?

25 A. I think -- oh, yes, it was.

1 Q. Okay. So that has both of them?

2 A. Is that the Varela?

3 Q. Yes.

4 A. Yes, that's correct.

5 Q. All right. Then if we could go to the
6 second page. What did you plead guilty to?

7 A. I think it was assault with a weapon;
8 conspiracy to murder; conspiracy to murder; and
9 murder.

10 Q. All right. Did you plead guilty to
11 everything that you were charged with?

12 A. I pled guilty and took responsibility for
13 everything I was charged with, yes.

14 Q. And, in fact, what is it that you are
15 technically now facing in reference to the murder
16 charge?

17 A. I think it's 30 years.

18 Q. I'm not talking about the Varela incident.

19 A. Okay.

20 Q. Let me go first to page --

21 A. The total, everything of what I'm facing?

22 Q. Hold on. Let me show you on page 3 of the
23 plea agreement. Okay. Do you see here under 6 and
24 7, the case number, it talks about 20 years for
25 Count 4, and that would be in the Varela case?

1 A. Yes.

2 Q. And then for Counts 3 and 6, which would
3 be the conspiracy to murders, that would be 10
4 years, correct?

5 A. That's correct.

6 Q. And then if we could go to the next page,
7 on page 4. So for the murder charge, do you see
8 there that you have -- that you're facing
9 imprisonment for life?

10 A. Yes.

11 Q. And is that your understanding when you
12 pled guilty, is that you're looking at a mandatory
13 sentence of life?

14 A. That's correct.

15 Q. Now, by cooperating, and testifying, are
16 you hoping that you get out of that mandatory
17 sentence and you're sentenced to something less?

18 A. I believe there is a situation called a 5K
19 that I signed, a Kastigar letter, that there is an
20 opportunity for that, yes.

21 Q. Okay. But are there any agreements, as
22 you sit there today, as far as a sentence?

23 A. No, ma'am.

24 Q. Now, when you decided to cooperate, did
25 you come to court that day in reference to the trial

1 that was upcoming?

2 A. Yes, I did.

3 Q. And did you have any intentions that day
4 of actually meeting with the United States and
5 cooperating?

6 A. No. October 24th?

7 Q. Yes.

8 A. No, I didn't. No.

9 Q. What year?

10 A. 2015.

11 Q. No --

12 A. Oh, what year are we in? 2018? 2017.

13 Q. Okay. And you remember that date. Why do
14 you remember that date?

15 A. Because that's the day I left the SNM.

16 Q. And did you meet with the representatives
17 of the United States and the FBI that day?

18 A. After my court proceedings, yes.

19 Q. And is that -- and then you decided to
20 cooperate?

21 A. Yes, I decided to cooperate that day.

22 Q. Now, at the end of talking with the United
23 States, did you realize or did you tell us that you
24 were in possession of something that day?

25 A. Yes. After my agreement to leave the SNM,

1 I think I looked at you and told you, "Well, is this
2 where I turn in my weapons?"

3 Q. Okay. And what were you referring to?

4 A. To two shanks that I had keistered.

5 Q. What does "keistered" mean?

6 A. Where you wrap up the weapons and put them
7 in your rectum.

8 Q. And did you actually have them with you
9 when you came to court that day?

10 A. I carried them everywhere with me for
11 years, yes. Different weapons, but yes.

12 Q. All right. I'm going to show Exhibit
13 Number -- and did you in fact end up turning those
14 in to the U.S. Marshal Service that day?

15 A. I did.

16 Q. I'm showing you Exhibit Number 874. What
17 is it that we're looking at?

18 A. Those are the two weapons wrapped up in
19 Saran Wrap, in like a sheath for -- out of a
20 toothpaste, so I could pull the weapons out.

21 Q. All right. And Exhibit Number 875. What
22 are we looking at?

23 A. One weapon has a handle sharpened, the one
24 that's ready to be pulled out. And the other one is
25 unsharpened. So after I would use the one that's

1 sharpened, and you go to lockup, and I don't have to
2 worry about getting another weapon.

3 Q. Okay.

4 A. Those are the weapons I had.

5 Q. And we see something on the top here. I'm
6 going to circle that. Is that what they were
7 wrapped in?

8 A. Just one of them.

9 Q. Okay. And the other one?

10 A. Was laid on top of it.

11 Q. Okay. And so did you then voluntarily
12 turn those in?

13 A. I did.

14 Q. And had you brought those to court with
15 you that day?

16 A. Yes.

17 Q. And had you been to court previously
18 numerous times while pending trial in both of your
19 matters?

20 A. Yes.

21 Q. And had you brought those to court each of
22 those times?

23 A. Not those ones in particular. I brought
24 those ones to numerous court dates. But I had
25 another one that, when the FBI picked us up, I had,

1 and I took it with me into federal custody.

2 Q. When you say -- when you were arrested on
3 December 3rd?

4 A. Yes.

5 Q. Now, I think I may have touched on this
6 briefly. Do you have an SNM tattoo?

7 A. No, I do not.

8 Q. But you have various tattoos on you?

9 A. I have various tattoos on me, yes.

10 Q. Why have you not received an SNM tattoo?

11 A. Because in the Department of Corrections,
12 when you -- I wasn't validated. I was a suspected
13 member. The policies changed. And when I first
14 came to prison, suspected members were still able to
15 make it to the Level 3 line. And I did want the
16 tattoo on me. And Daniel Sanchez told me for people
17 like him and I, the onda was in our heart; that we
18 didn't need it on our skin.

19 And we were planning on getting the
20 placaso when we went to the federal system. But in
21 the state level, we're told not to get it unless
22 you're already validated.

23 Q. Now, are you -- had you renounced before?

24 A. No.

25 Q. Have you ever, other than before October

1 24th in 2017, had you in any way ever renounced?

2 A. No.

3 Q. Are there ways of renouncing within the
4 SNM?

5 A. There are ways, yes.

6 Q. And what ways are those?

7 A. I think since maybe 2012, and ongoing,
8 there is an RPP. There is just going to protective
9 custody.

10 Q. Okay. Would that be you, an SNM member
11 such as yourself, having to go to STIU and saying,
12 "I'm done"?

13 A. For me, I don't think that was an option.
14 For me, my reputation within the Department of
15 Corrections had gotten to where I was just this
16 violent, crazy guy; that there is no way in hell
17 that they would trust me to the RPP. Or if I was to
18 go in and tell them, "Hey, I want to go to
19 protective custody," they would laugh; they wouldn't
20 allow me. There were no real options for me.

21 Q. That was your belief?

22 A. That was my belief. And after the fact,
23 speaking to STIU now, when I told them in 2011 I did
24 want out, they laughed at me and said, "You would
25 have never got out. We would have never let you go

1 anywhere."

2 Because at that time, my reputation had
3 gotten very large in the New Mexico system.

4 Q. Now, for other members, would that be an
5 option?

6 A. It's an option. Protective custody is
7 just pretty much moving from one cell to another
8 cell, probably in the same unit. You still see the
9 same individuals. It's not very often that an
10 individual gets moved outside the unit. It takes a
11 process. The RPP is a process.

12 And, you know, there's ways that --
13 members do turn Christian, but they're still
14 involved in the drug activity; they're still
15 involved in the SNM; they're still obligated to back
16 up the SNM if the SNM faces on rivals. So it's not
17 really an option to go Christian, or it's not a way
18 out.

19 Q. All right. Now, when you decided to
20 cooperate, you said it was a difficult decision for
21 you. Why did you make that decision?

22 A. I was tired.

23 Q. Tired of what?

24 A. I was tired of being in solitary
25 confinement. I was tired of the violence. I was

1 tired of continuously -- just the continued
2 activity.

3 And I knew, with conversations with Arturo
4 Garcia while we were in federal custody, that it was
5 going to continue. And I knew that the way I was
6 dedicated to the SNM, that I was going to be the one
7 that was putting in the most work in the feds. I
8 was going to be the one at ADX, while most of these
9 guys are eating ice cream on a federal line
10 somewhere. And I was just tired.

11 I began educating myself in 2011. And
12 with an education, I was able to look beyond gang
13 life. I never had a life. I've never had a car;
14 I've never had a home; I've never had nothing. I've
15 been locked up most of my juvenile life and my adult
16 life, all my adult life.

17 Q. Have you ever, since -- I think we heard
18 yesterday you testified that you went in when you
19 were 18?

20 A. Yes, I was 18, straight out. I think I
21 was out of juvenile custody for five months.

22 Q. And have you ever been out since then?

23 A. No.

24 Q. Now, Billy Garcia. Did you know Billy
25 Garcia?

1 A. I knew of Billy Garcia before I ever met
2 him. Yes, I know him.

3 Q. Did you, in fact, meet him?

4 A. It wasn't a cordial meeting or nothing.
5 There was a conversation, but it wasn't an
6 introduction.

7 Q. Okay. And did you know whether or not he
8 was in the SNM?

9 A. Yes. He was a big name in the SNM, yes.

10 Q. And where was it that you met him?

11 A. In -- after the Robert Esparza stabbing, I
12 was moved to 1-A. And I think he was in C pod and I
13 was in D pod. I met him in the yard one day.

14 Q. Okay. And when you say the Esparza
15 incident, that's the one that we saw the video on
16 yesterday?

17 A. That's correct.

18 Q. And so you were sent to the North?

19 A. I was still in the North, but just -- I
20 moved housing units.

21 Q. Okay. So when you say you met him on rec,
22 would that be rec in the cages?

23 A. It's another Jurassic Park in another part
24 of the facility.

25 Q. Okay. And did you have a conversation

1 with him?

2 A. I don't think it was really a
3 conversation. It was, he was referring to someone
4 in our unit, in our pod, that he was saying was a
5 rat, and I knew he was on bad standings with Gerald
6 Archuleta in the tabla.

7 He still wanted to influence --

8 MR. SINDEL: May we have a limiting
9 instruction?

10 THE COURT: These comments by Mr. Billy
11 Garcia can only be used in your consideration of the
12 charges against Mr. Billy Garcia. They can't be
13 used against any of the other defendants.

14 MR. CASTLE: Your Honor, may I approach
15 the bench?

16 THE COURT: You may. So the jury will
17 need to keep that in mind when it's considering this
18 statement.

19 (The following proceedings were held at
20 the bench.)

21 MR. CASTLE: None of these statements have
22 been provided to the defense at all. This is the
23 first time we're hearing it.

24 MS. ARMIJO: They have, Your Honor. And I
25 can find the 302.

1 MR. CASTLE: Statements by Mr. Garcia.

2 MS. ARMIJO: Bates 61849. It is written
3 March 23, 2018. Billy Garcia, Your Honor.

4 THE COURT: Why don't you show it to Mr.
5 Castle and see if that solves his concern?

6 MR. CASTLE: That's not what they're
7 talking about.

8 MS. ARMIJO: Yeah, we are. That's what
9 we're talking about.

10 MR. COOPER: We've seen that, but not --

11 MR. CASTLE: This wasn't listed as a bad
12 act or anything.

13 MS. ARMIJO: It's not a bad act. It's a
14 statement. It's not a co-conspirator statement.
15 It's a statement. This is what he's referring to
16 because there was a disagreement.

17 MR. CASTLE: All this says is at a verbal
18 argument with Billy Garcia in the rec yard, the
19 statement says Rodriguez accused Garcia of
20 protecting Baby Zack, which is in violation of the
21 SNM rules. No other statements by Mr. Garcia in
22 that report.

23 MR. COOPER: The question here a moment
24 ago was that Billy was telling Mr. Rodriguez that
25 somebody was a snitch, somebody was not good. And

1 that's not what this is about.

2 MS. ARMIJO: This is about it. Because
3 he's talking about Baby Zack telling Archuleta that
4 the disagreement is about -- I mean, he wasn't
5 allowed to explain, but I think that what he will
6 testify about is that he did; he talked about
7 Archuleta. He said Styx. He started to explain
8 that there was an incident regarding Styx, and that
9 Billy Garcia was in bad standing because of this
10 incident that involves Julian Romero and the
11 shooting of Baby Zack.

12 And so it's a big political thing, and Mr.
13 Rodriguez was not happy with Mr. Garcia. And
14 that's --

15 MR. CASTLE: Could the Court look at it?

16 THE COURT: I don't know what you want me
17 to do. If it's admissible evidence, this was the
18 disclosure. I don't know what the Court can really
19 do. Oftentimes, witnesses are not going to testify
20 just like the 302 is written. It's just part of
21 trial work.

22 Where do you want me to look here?

23 MR. CASTLE: Judge, I'm going to ask if
24 the Court would do some examination of Mr.
25 Rodriguez, but we're going to reserve a portion of

1 our cross-examination, because we're hearing new
2 statements. We may need to cross-examine.

3 THE COURT: Show me on there what it is
4 you want me to look at.

5 MS. ARMIJO: I'm sorry. I had it under
6 Billy Garcia. It's this incident.

7 THE COURT: Okay. I guess I don't
8 understand what the defendant is requesting here.

9 MR. CASTLE: We had hearings on bad acts.
10 This was not listed as a bad act, if it's some kind
11 of a threat against an informant. So we filed that
12 motion. The Court granted it so that we can prepare
13 for trial. They haven't disclosed it, and they
14 didn't indicate they were going to put on some kind
15 of threat against some rat. So that's where we're
16 going with it, Judge, if it's the shooting of Baby
17 Zack, they're going to get into it. We've received
18 no discovery of that.

19 THE COURT: This would be evidence of
20 racketeering activity, and it's not a 404(b). It's
21 intrinsic to this case. So I don't see how this
22 would be irrelevant to --

23 MR. CASTLE: If it is intrinsic, the
24 motion covered that, used 404(b) as a short term,
25 also used res gestae. If it's intrinsic, they had

1 obligation to produce discovery concerning that
2 incident, whether it be Rule 16 materials. I can
3 tell you that I would ask that if they have looked
4 into materials that might be available in the Baby
5 Zack shooting, to see if they've disclosed. It's
6 all exculpatory information, and they have a duty to
7 obtain it. We've received none of that.

8 THE COURT: Anything more than this 302?

9 MR. BECK: So I think this is the Rule 16
10 discovery to which they're entitled. The United
11 States doesn't have -- I mean, I don't want to beat
12 a dead horse, but we released everything in our
13 possession, what's in the state's possession for the
14 Baby Zack incident is out there somewhere, but it's
15 not in the United States' possession, and we don't
16 have an affirmative obligation to go out and get
17 materials that are not in our possession.

18 They've had notice of the Baby Zack
19 incident because Gerald Archuleta has testified
20 about it many times, testified about it in the last
21 trial, testified about it again here.

22 And, I mean, these are just things -- it's
23 almost like it's a Catch-22 for the United States.
24 They complain when they don't have information that
25 comes out on the stand for the first time; but then

1 when we provide them information and get debriefs,
2 trying to cover everything, they complain that it's
3 late notice and they didn't get it in the 403 bad
4 acts evidence.

5 It's just the nature of working with
6 informants, that when you sit down with them, they
7 tell you more things. They cross-examine. They do
8 the job and cross-examine. And pointing to -- it
9 wasn't in the 302, and they're able to do that here.
10 I mean, there is just -- I see frustration getting
11 this for the first time. And the United States has
12 that frustration, too, when we've got to send out
13 emails and get 302s out.

14 That's just the way these cases work. And
15 the law doesn't provide a remedy, other than a
16 vigorous cross-examination with these.

17 MR. CASTLE: Can I briefly respond?
18 Gerald Archuleta was prosecuted for that shooting,
19 so obviously there is something exculpatory there,
20 because someone else was charged in it: Mr.
21 Archuleta.

22 The Government here has been working with
23 state and local investigators, including the State
24 Police and Albuquerque police, in the prosecution of
25 this case. So they are working with them, and they

1 do have a duty to obtain materials that would be
2 under over which would be exculpatory.

3 This isn't a new issue. We brought this
4 up. This was part of not only the statements issue,
5 but it was also whatever the --

6 THE COURT: I think the defendants made
7 their point. They've preserved their issue. But I
8 have repeatedly rejected it throughout this case.
9 The Government doesn't have an obligation to go
10 looking in the files of State Police and City
11 Attorney's Office for Brady or Rule 16 information.

12 And, you know, I just approved one of the
13 CJA vouchers for Mr. Cooper up here this morning,
14 and y'all have gone to the District Attorney's
15 Office and gotten extensive files. So I just don't
16 see what I can really do on this. It seems to me
17 this is part and parcel of this case.

18 The Government has Brady or Rule 16 or
19 Giglio information, and they have an obligation to
20 produce it. The representation has been that they
21 had. It seems to me this is just evidence the
22 defendant is going to have to deal with.

23 MR. CASTLE: Just one last thing. I think
24 when the Court made that decision about the state
25 was not -- that the Government did not have --

1 THE COURT: State Police. Because I did
2 have a little different rule with the Corrections
3 Department.

4 MR. CASTLE: I think since that time, the
5 Court has heard evidence that there has been joint
6 task force with the FBI, several which also involve
7 members of the State Police; and that the State
8 Police was fully cooperative with the FBI in
9 providing information, materials, et cetera.

10 So I think that's changed since when the
11 Court originally ruled on this sometime in 2016.
12 Because it had been represented at that time by the
13 Government that they hadn't been working with the
14 State Police; that there was an independent
15 organization. The evidence has come out quite
16 different, especially in the last two weeks when we
17 had motions hearings.

18 THE COURT: Well, if there is any that
19 covers this particular event, we can revisit. But I
20 don't know of any that was covering this event. So
21 if you've got something on that, we can certainly
22 talk about it. But I don't know of any evidence
23 that it was covering the event that we're talking
24 about here. All right.

25 So I'll overrule the objection.

1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right. Ms. Armijo.

4 BY MS. ARMIJO:

5 Q. All right. Mr. Rodriguez, I forget what
6 my exact question was, but I believe we were
7 starting to talk about a conversation you had with
8 Mr. Garcia, and so I can get back to where I was.

9 Now, you indicated that you were in rec;
10 is that correct?

11 A. Yes.

12 Q. And had you had any previous -- did you
13 know who Billy Garcia was before then?

14 A. I knew who he was, but we never had any
15 interactions.

16 Q. And did you have an interaction?

17 A. Yes.

18 Q. And approximately when was this
19 interaction?

20 A. Approximately a date?

21 Q. Yeah, year?

22 A. It was when I got moved after the Robert
23 Esparza stabbing. So 2008.

24 Q. Okay. And what was the conversation in
25 reference to?

1 A. It was in reference to somebody that was a
2 rat in our pod, and I knew that his nephew had
3 attempted to kill one of my leaders and had ratted
4 on him.

5 MR. CASTLE: Objection; lack of
6 foundation.

7 THE COURT: Well, why don't you lead him
8 through this so he doesn't get in areas that you
9 don't want or need.

10 Q. All right. Now, I guess let me ask a
11 little bit of background, and I'm going to try and
12 ask you some questions about background. When you
13 say "a leader," are you referring to Gerald
14 Archuleta?

15 A. Yes.

16 Q. What is his nickname?

17 A. Styx.

18 Q. Okay. Was there an incident that happened
19 with Gerald Archuleta and another SNM Gang member
20 that caused a rift within the SNM?

21 A. Yes. There was an attempt on his life.

22 MR. CASTLE: Your Honor, objection; not
23 responsive.

24 THE COURT: Just "Yes" or "No."

25 A. Yes.

1 Q. Was that Julian Romero?

2 A. No. The one who tried to kill him?

3 Q. No, no, no, no, no. I'm just talking --
4 I'm just trying to get some background information
5 first.

6 A. Okay.

7 Q. Was that in reference to an incident --
8 was there a rift between Julian Romero and Gerald
9 Archuleta?

10 A. Yes.

11 Q. And was that something that was well known
12 within the SNM?

13 A. Yes, it was very well known.

14 Q. And did you have a side in that rift?

15 A. I was with the tabla, yes.

16 Q. When you say you were with the tabla, was
17 Gerald Archuleta on the tabla at that time?

18 A. Yes.

19 Q. So were you on Gerald Archuleta's side?

20 A. Yes.

21 Q. And were there other SNM members that were
22 on Julian Romero's side?

23 A. Yes, there was.

24 Q. Now, are you aware of whether or not --
25 and this is just "Yes" or "No" -- this feud between

1 the two of them rose to the level that actually
2 people were being assaulted one way or another?

3 A. Yes.

4 MR. CASTLE: Your Honor, they have to
5 establish a foundation of what he actually observed
6 and what he has a personal knowledge about. Not
7 through hearsay, what he heard through the
8 grapevine, things of that nature. It's just what
9 he's observed and what he's seen or heard, is what
10 he's allowed to testify about.

11 And they're going into, "Are you generally
12 aware," and that's not proper evidence under the
13 rules of evidence.

14 THE COURT: Well --

15 MS. ARMIJO: I'm sorry.

16 THE COURT: I know you're trying to
17 establish foundation, but get the basis of his
18 knowledge so that Mr. Castle can object if he
19 wishes.

20 BY MS. ARMIJO:

21 Q. Were you close with Gerald Archuleta?

22 A. Yes, I was.

23 Q. Did you -- and were there things that you
24 personally did because of this, this disagreement?

25 A. There was a kill order on the people he

1 was feuding with. So, yes, I was willing to do
2 things on his part.

3 Q. Okay. And so did Gerald Archuleta tell
4 you things as far as -- and you say a kill order.
5 For the kill order, who was there a kill order on
6 that you were willing to do it on?

7 A. Anyone that took Julian Romero's side.

8 Q. Okay. And why was it that you were
9 willing to do that?

10 A. Because when I came into the SNM, there
11 was already a tabla in place, and that's who I fell
12 under. The people who brought me in were on the
13 tabla, most of them. And that's who I was told to
14 follow.

15 Q. Okay. Now, let's go back to the
16 conversation that you had with Billy Garcia.

17 A. Right.

18 Q. Was it in reference to something regarding
19 the Julian Romero and Gerald Archuleta split?

20 A. At that time, no. But when I responded to
21 him, yes.

22 Q. Okay. Tell us about your conversation
23 with Billy Garcia.

24 A. There was a guy in our pod that was
25 accused of being a rat, and I got mad when he was

1 calling someone a rat in our pod. And his nephew
2 was a rat. So I told him, "What? Like your
3 nephew?"

4 Q. Okay. There was somebody that was a rat
5 in the same pod as you?

6 A. D pod, yes.

7 Q. Okay. And in the conversation, you said
8 "he." What are you referring to?

9 A. Billy Garcia.

10 Q. Okay. Now, if you can use names, just so
11 that we can keep it clear.

12 A. Okay.

13 Q. Go ahead.

14 A. So, when he said that, I told him, "What?
15 Like your nephew?" Because I had read the paperwork
16 that Baby Zack had told the emergency transport,
17 "Let me tell you who shot me before I die." And he
18 mentioned --

19 MR. CASTLE: Your Honor, this is hearsay.

20 THE COURT: Well, I'm having trouble
21 following the "he" here. There is no names, so I'm
22 not sure I understand. So --

23 BY MS. ARMIJO:

24 Q. Okay. And I'm going to try and break it
25 down and have you go slow.

1 A. Okay.

2 Q. What was your first comment, or how did
3 the conversation start?

4 A. He was --

5 Q. "He" being who?

6 A. Oh, Billy Garcia.

7 Q. Okay. What did he say?

8 A. He was telling me and Israel Garcia that
9 someone in our pod was a rat.

10 Q. Okay. So Billy Garcia was saying,
11 "Someone in your pod is a rat"?

12 A. Right.

13 Q. What significance did that have to you,
14 that Billy Garcia was saying someone is a rat?

15 A. Because his nephew was a rat, and I felt
16 that he shouldn't be calling someone a rat, if your
17 own nephew is a rat, and you're protecting him.

18 Q. So when he told you -- "he" being Billy
19 Garcia -- told you that somebody was a rat, does
20 that have any significance within the SNM?

21 A. Yes.

22 Q. What significance does that have?

23 A. Well, we should disassociate ourselves
24 with them and attempt to kill him.

25 Q. So when he, Billy Garcia, told you that,

1 informing you that there was somebody that was a rat
2 in your pod, were you at that point willing to do
3 that, or do anything because of that, because of him
4 telling you that, "him" being Billy Garcia?

5 A. No, not for him. No, not for Billy
6 Garcia. No.

7 Q. So why is that?

8 A. Because even though he was a name in the
9 SNM, it didn't matter to me because I was with the
10 tabla. They told me that he took Julian Romero's
11 side. And therefore, if any kind of situation came
12 down, we were going to kill him.

13 Q. Okay.

14 A. Kill Billy Garcia.

15 Q. Okay. Because he took Julian Romero's
16 side?

17 A. Right.

18 Q. So you were not willing to take the
19 suggestion that somebody was a rat?

20 A. It was just a suggestion. There was no
21 paperwork. There was no foundation to it. There
22 was nothing that -- he was no one to me.

23 Q. To you personally?

24 A. To me personally, no. I was with Styx and
25 the tabla.

1 Q. When you say you were with Styx, that's
2 Gerald Archuleta?

3 A. Yes.

4 Q. And was that because of the Gerald
5 Archuleta/Julian Romero incident?

6 A. That's correct.

7 Q. Now, after that, did you ever speak to him
8 again?

9 A. Nope. I never seen him again until the
10 feds picked us up. I would see him on transport.
11 We didn't really talk. And I would see him in
12 court, "Hey, what's up, Wild?" That's it. Wild is
13 a nickname. People called him Wild Bill. I called
14 him Wild.

15 Q. Now, Arturo Garcia. I believe that you've
16 already talked a bit about him. Did you -- was
17 there anything about Arturo Garcia and his views of
18 the SNM that had an impact on you?

19 A. Well, about the current views. The
20 current views we had were, I was going to be a part
21 of the new building of the SNM from within. When we
22 went to the feds, everything Arturo had on me --
23 everything Arturo told me has an impact.

24 We were willing --

25 Q. And why is that?

1 A. Because he's the one that opened the doors
2 for the SNM for me. And, to me, he was the one that
3 was the best suitable person to lead the SNM.

4 Q. So did you look up to him?

5 A. I did.

6 Q. And did you ever have any conversations
7 with him in reference to other -- did you have
8 conversations with him in Otero County?

9 A. Yes, I did.

10 Q. And did he -- and what did he -- I'm
11 trying to be specific without leading you. Are you
12 aware of a person named Sergio Rodriguez?

13 A. Yes, I'm aware of Sergio Rodriguez.

14 Q. Who is Sergio Rodriguez?

15 A. He's a guy I did New Mexico Boys School
16 time with, and he's an SNM member.

17 Q. What is his nickname?

18 A. Churro.

19 Q. And is there anything that Billy Garcia
20 told you in reference to Churro?

21 A. Billy Garcia or Arturo Garcia?

22 Q. I'm sorry, Arturo Garcia.

23 A. Well, as far as that time that --

24 Q. And when is this conversation?

25 A. This conversation was when we were in

1 Otero County Detention Facility. We were neighbors,
2 and in the corner of the wall, the cement wasn't
3 all -- what would you say? -- set, I guess. There
4 was air pockets within it, and we could speak
5 through the corner of the wall. He had told me
6 that -- we would speak hours at that corner, just
7 about life, and about the onda, and the new
8 structure of the onda, and about the case.

9 Q. And this is after you were arrested on
10 this case?

11 A. Yes.

12 Q. Okay.

13 A. He had told me that their ace in the
14 pocket was that Churro was arrested after the Sammy
15 Chavez murder, and that that was going to be their
16 defense. And we came up with Arturo Garcia, myself,
17 Mauricio Varela, and Daniel Sanchez were going to be
18 crucial members to the SNM, going to the federal
19 system.

20 Q. Okay. I'm going to stop you there. You
21 talked about --

22 THE COURT: Would it be possible to go
23 into detail on this after the break?

24 MS. ARMIJO: Yes, Your Honor.

25 THE COURT: All right. So let's be in

1 recess for about 15 minutes. All rise.

2 (The jury left the courtroom.)

3 THE COURT: All right. We'll be in recess
4 for about 15 minutes.

5 (The Court stood in recess.)

6 THE COURT: All right. Let's go on the
7 record. I'm going to have Ms. Bevel go ahead and
8 line up the jurors.

9 After I got Mr. Blackburn's opinion done
10 on the Arturo Garcia discussion statement that we're
11 in the middle of, I have turned back to the 608/609
12 issue involving Baby Rob Martinez, and that
13 statement, the slide that we had.

14 Is there anything that's coming up quickly
15 that's more important than that? Or is that in need
16 of ruling? Your supplemental brief that you filed
17 over the weekend?

18 MR. CASTLE: That's it. Well, the Court
19 is about to get a sequestration brief. I mean, it's
20 like two pages.

21 THE COURT: And what does that entail?

22 MR. CASTLE: Whether the defense
23 investigator can be in here.

24 THE COURT: Okay. Can you think of
25 anything more urgent than what I'm working on now,

1 608/609, Baby Rob, that's coming up quickly? I'm
2 just trying to stay ahead of you guys. Okay. I'll
3 just keep working. Tell me if there is something
4 coming up that I need to be thinking about. All
5 right.

6 All rise.

7 (The jury entered the courtroom.)

8 THE COURT: All right. Mr. Rodriguez,
9 I'll remind you that you're still under oath.

10 Ms. Armijo, if you wish to continue your
11 direct examination of Mr. Rodriguez, you may do so
12 at this time.

13 MS. ARMIJO: Thank you, Your Honor.

14 THE COURT: Ms. Armijo.

15 BY MS. ARMIJO:

16 Q. All right. Mr. Rodriguez, I think we were
17 talking about a conversation that you had with
18 Arturo Garcia, that you had when you were in Otero
19 County; is that correct?

20 A. Yes.

21 Q. And I just want to make sure, was this
22 conversation before October 24th of 2017?

23 A. Yes, this was before.

24 Q. So this was before you had decided to
25 cooperate; correct?

1 A. Yes, ma'am.

2 Q. And can you tell us the statement again?

3 A. In reference to Churro?

4 Q. Yes.

5 A. That we were talking about him being added
6 onto the RICO indictment, the superseding.

7 Q. And I'll stop there. What do you mean, he
8 being added onto the RICO indictment?

9 A. Arturo Garcia was superseded onto the RICO
10 indictment, after being on the VICAR.

11 Q. Just so that the jury understands, is the
12 case that you were indicted in on and the case that
13 we're here in court, is that commonly referred to as
14 the VICAR case?

15 A. That's correct, yes.

16 Q. Was there another indictment that the
17 United States brought against a different group of
18 individuals that's sometimes referred to as the RICO
19 case?

20 A. That's correct.

21 Q. Okay.

22 MR. BLACKBURN: Judge, I'll renew my
23 objection.

24 THE COURT: All right. Understood,
25 overruled.

1 BY MS. ARMIJO:

2 Q. And in reference to that, were you two
3 talking about those two cases?

4 A. Yes.

5 Q. And just so that we're clear, the case
6 that you pled to in reference to Alex Sosoya, that
7 was a different indictment; is that correct?

8 A. The VICAR indictment -- oh, the Sosoya is
9 a different one, yes. It's a VICAR also, though.

10 Q. Okay. And when you say VICAR, are you
11 referring to Violent Crimes in Aid of Racketeering?

12 A. That's correct.

13 Q. Okay. So you were having a conversation
14 with Arturo Garcia?

15 A. Right.

16 Q. And now that we -- and you said there was
17 something in reference to the indictments. Go ahead
18 now.

19 A. He was getting superseded onto the RICO
20 indictment, which is overt acts. And he was saying
21 he was officially charged for the Sammy Chavez, but
22 that there was too many mistakes in it, and that
23 their ace in the pocket was that Churro was arrested
24 before they found the body.

25 Q. So Sammy Chavez, was he murdered?

1 A. He was murdered, yes.

2 Q. And are there allegations -- I'm not
3 saying whether they're true or not, but were there
4 allegations that Sergio Rodriguez -- by the
5 Government -- and Arturo Garcia were involved in
6 that murder?

7 A. That's correct.

8 Q. Okay. And so what would -- he said their
9 ace in the hole was what?

10 A. Their ace in the hole was that Churro got
11 arrested before they found the body.

12 Q. Now, was there any conversation that you
13 had in reference to some members named Rascon?

14 A. Yes, the Rascon brothers.

15 Q. Who are the Rascon brothers?

16 A. The Rascon brothers are two SNM members
17 that go by the name of Cheeky and Conquito.

18 Q. And are they SNM Gang members?

19 A. Yes, ma'am.

20 Q. Are they -- when you had this conversation
21 with Arturo Garcia, were they in good standing?

22 A. I'm not aware of their standing, as far as
23 green light or not.

24 Q. Okay.

25 A. But their names came up during a court

1 proceedings. And on the way back on transport to
2 Otero County, Arturo Garcia expressed that he would
3 like to get ahold of their STIU files, because he
4 wanted to see if they had ratted on the Freddie
5 Sanchez murder.

6 Q. Okay. And if -- and do you know -- and if
7 you do, just "Yes" or "No." Do you know whether or
8 not the Rascon brothers are believed to be somehow
9 involved in the Freddie Sanchez murder?

10 A. I believe there was allegations that they
11 were involved, yes.

12 THE COURT: Just a "Yes" or "No."

13 Q. Just a "Yes" or "No."

14 A. Yes.

15 Q. Okay. And in reference, why would he want
16 to get the STIU files? Did he tell you?

17 A. He wanted to know if they had ratted. And
18 that if they had, he had people that would come
19 across the border and kill them, from Mexico.

20 Q. Now, were there plans for you -- as far as
21 the future of SNM, if you were to go into -- again,
22 this is before your cooperation -- if you were going
23 to be going into the federal system?

24 A. He wanted me to hold the position of
25 sergeant of arms, to be in charge of all the hits

1 that would go on in the federal system. So I'd be
2 in charge of electing who was going to go on the
3 hits, and providing the weapons for them.

4 Q. "He" being who?

5 A. Arturo Garcia. I was going to be under
6 him in that position.

7 Q. And who would the leaders be?

8 A. It would be -- at that point in time, I
9 know it was going to be Arturo Garcia. I was
10 advocating Anthony Baca and Arturo Garcia to run the
11 whole SNM. But they wanted to make another tabla,
12 and they wanted -- Daniel Sanchez would have been on
13 it. Archie would have probably had influence on it.
14 Arturo Garcia. Samuel Silva. It was still in the
15 process of being worked through.

16 And we were going to base this new off our
17 STIU files on the discovery, who was going to be
18 eligible to be in the new structure in the SNM.

19 Q. Now, when you first got into the SNM, is
20 it something that -- did Arturo Garcia tell you
21 anything as far as making it well known that you
22 were in the SNM? Or no?

23 A. No. He wanted me to stay on the low,
24 which is a term where they don't want to expose me
25 to administration for suspected or validated SNM

1 members, so that I could go back out to a Level 3
2 line and stab or kill SNM -- I mean, a Burqueno or a
3 Sureno Gang member. So I can go put in my work.

4 Q. And is that something that you did?

5 A. I didn't make it. But I ended up stabbing
6 a Burqueno Gang member, yes.

7 Q. Now, Joe Gallegos. Do you know Joe
8 Gallegos?

9 A. Yes, I know him.

10 Q. And I don't know if you ID'd him
11 yesterday. Do you see him in the courtroom today?

12 A. Yes, I see him.

13 Q. Where is he seated?

14 A. He's seated next to his lawyer, in front
15 of Arturo Garcia.

16 MS. ARMIJO: May the record reflect
17 identification of Joe Gallegos?

18 THE COURT: The record will so reflect.

19 Q. Prior to this case and being arrested in
20 this case, did you know Joe Gallegos?

21 A. No, I did not.

22 Q. How was he introduced to you?

23 A. Daniel Sanchez introduced him to me when
24 he was in Otero County Correctional Detention
25 Facility in New Mexico. He was in SHU one, I was in

1 SHU two, which is a Seg unit, and two different
2 units. But when we go to yard, there is a divider
3 you could speak over to. Daniel Sanchez hollered
4 over to him; asked him how he was doing; introduced
5 me; said, "Q-Vo, what's up?"

6 That's when we went on our way.

7 Q. Okay. So did you take that as an
8 introduction that he was an SNM Gang member?

9 A. Yes. Daniel Sanchez --

10 MR. SINDEL: I'm sorry. I couldn't hear
11 the last part.

12 THE COURT: Ms. Armijo's question? She
13 said, "So did you take that as an introduction that
14 he was an SNM Gang member?"

15 MR. SINDEL: Well, I'll object to that,
16 Your Honor. It calls for a conclusion and
17 speculation. The words are the words.

18 THE COURT: Well, it's his conclusion.
19 You can cross him on it. Overruled.

20 BY MS. ARMIJO:

21 Q. What was your answer?

22 A. Daniel Sanchez went on to tell me that he
23 was --

24 MR. SINDEL: I object, Your Honor.

25 THE COURT: She's not soliciting this.

1 BY MS. ARMIJO:

2 Q. I'm sorry. I just wanted to get --
3 because I wasn't sure. I know that there was an
4 objection -- that you answered that.

5 Did you take that to mean that Joe
6 Gallegos was a carnal?

7 A. Yes. Daniel Sanchez confirmed it, yes.

8 Q. That was your belief?

9 A. Yes.

10 Q. Andrew Gallegos. Did you know him prior
11 to being charged in this case?

12 A. No, I do not.

13 Q. Do you see him in the courtroom today?

14 A. Yes. He's right here to the left, in the
15 back.

16 MS. ARMIJO: May the record reflect the
17 identification of Andrew Gallegos?

18 THE COURT: The record will so reflect.

19 Q. Now, did Andrew Gallegos do anything while
20 you were being held in Estancia?

21 A. We were being moved from Chaparral to
22 Estancia for court proceedings in Albuquerque. And
23 on transport, he volunteered to give at least four
24 of us care packages when we arrived at Estancia.

25 Q. What are care packages?

1 A. It would be hygiene, soap, canteen;
2 anything that was a necessity that we needed to stay
3 there. Because we were going there with no property
4 whatsoever, just for court proceedings. So we
5 stayed there four to five days. We couldn't order
6 canteens, so Andrew Gallegos provided us that.

7 Q. And how would he provide -- I mean, would
8 he knock on your door and say, "Here you go"?

9 A. No. He asked us what we needed, on
10 transport. And he said when we got there, we would
11 have it. He got a CO to pass it to his brother, Joe
12 Gallegos, who disbursed it between three or four of
13 us.

14 Q. And did you call him -- or did he refer to
15 you as "carnal," or you he as "carnal"?

16 A. Yes.

17 Q. So did you believe he was an SNM Gang
18 member?

19 A. Yes, ma'am.

20 Q. Allen Patterson. Do you know Allen
21 Patterson?

22 A. I know of Allen Patterson, yes.

23 Q. How do you know about Patterson?

24 A. I know him by his nickname, Trigger.

25 MR. LAHANN: Objection, Your Honor;

1 foundation and hearsay.

2 THE COURT: Well, I think his name, if
3 he's heard his name, he can give it, and you can lay
4 some foundation for it.

5 BY MS. ARMIJO:

6 Q. How do you know Allen Patterson?

7 A. I grew up in Silver City, and my gang was
8 a rival to his gang. We knew who the individuals
9 were by nicknames. If we seen them, we'd say,
10 "That's Trigger," or, "Hey, that's Archie," or
11 whoever. And we were in an ongoing battle between
12 the China Town and East Side Folk Gang. And he was
13 a gang member that was known to shoot, and he was a
14 dangerous individual.

15 Q. Well, when you're talking about China Town
16 Locos, is that a rivalry gang of your gang?

17 A. Yes, a street gang.

18 Q. Okay. And so, I'm assuming that since you
19 were not on the streets, same gang, you would not
20 have associated with him as if he were on -- in your
21 gang, correct? I mean, as far as sit down and
22 socialize with him?

23 A. On the streets?

24 Q. Yes.

25 A. If I was to get out and be a part of the

1 SNM, yes, I would have socialized with him.

2 Q. Okay. But this is before. I'm talking
3 about before you were SNM.

4 A. No, I would never socialize with him. No.

5 Q. Because he was China Town Locos?

6 A. Yes.

7 Q. Okay. And then, now that you are both --
8 well, is he an SNM Gang member?

9 A. Yes, he is.

10 MR. LAHANN: Objection, Your Honor;
11 foundation.

12 THE COURT: Well, ask him how he knows,
13 and then I'll determine whether to strike the
14 answer.

15 Q. How do you know that he is an SNM Gang
16 member?

17 A. Mauricio Varela told me.

18 THE COURT: Hold on.

19 MR. LAHANN: Objection, Your Honor.

20 THE COURT: Sustained. Strike. The jury
21 will disregard the last two questions and answer.

22 BY MS. ARMIJO:

23 Q. Have you had contact with him since this
24 case has been pending?

25 A. Yes.

1 Q. When I say "contact," did you stay in the
2 same place, or has it been in court proceedings?

3 A. In court proceedings, and on the way back
4 to Estancia when we were housed there.

5 Q. And in that capacity, did you have actual
6 contact with him?

7 A. Yes.

8 Q. And as far as that contact, would you ever
9 call him "carnal," or would he call you "carnal"?

10 A. Yes. He approached me in the waiting
11 area, where he came and shook my hand.

12 MR. LAHANN: Objection, Your Honor. May
13 we approach?

14 THE COURT: You may.

15 (The following proceedings were held at
16 the bench.)

17 MR. LAHANN: Your Honor, these statements
18 have not been disclosed.

19 MS. ARMIJO: This is just foundation that
20 he objected to. I wasn't planning on getting into
21 it, but he's objecting to foundation.

22 THE COURT: I think whether they call each
23 other "carnal," I think that's hard to object to
24 that. I'm going to overrule the objection.

25 MR. SINDEL: May I? Here, he hears

1 objection to hearsay. He knows exactly what's going
2 on. She asked him a question, and then he said that
3 Daniel Sanchez confirms that my client's an SNM
4 member. I have to get up, stand up, make an
5 objection. He knows better than this.

6 I would just ask the Court to make sure
7 that he doesn't blurt things in, if it happens
8 again. I realize we can't go backwards and rewind
9 the tape.

10 THE COURT: Let's just do this: Let's let
11 Ms. Armijo lead him through this stuff. And, you
12 know, be fair. Don't lead him with hearsay, but
13 lead him through this so he doesn't volunteer that
14 stuff. It's hard for all of us to police that. We
15 don't know what's going to come out of his mouth.

16 If you're getting to that point, they
17 object to the leading, I'll have to sustain it; and
18 then we'll have to go the other route. When we get
19 to the tricky parts, it would be better if you just
20 get what you want. If they want to object to
21 leading and tell him yes/no, let's try to keep him
22 from volunteering stuff.

23 MS. ARMIJO: That's fine, as long as they
24 don't object.

25 THE COURT: If they object, then I'll have

1 to sustain it, and you'll have to do it the long
2 way. I think it would be better control for them
3 right now, because he's a mixture. He's got a
4 little bit of stuff you can get from him that's
5 non-hearsay. And there is a lot of stuff in his
6 head that probably is hearsay.

7 So we're going to have to walk through it
8 kind of carefully.

9 MS. ARMIJO: All right. Thank you.

10 MR. SINDEL: Thank you, Judge.

11 THE COURT: Let's try that.

12 (The following proceedings were held in
13 open court.)

14 THE COURT: All right. Ms. Armijo.

15 BY MS. ARMIJO:

16 Q. Mr. Rodriguez, did Allen Patterson ever
17 call you "carnal"?

18 A. Yes, he did.

19 Q. Did you call Allen Patterson "carnal"?

20 A. Yes, ma'am.

21 Q. Is it your opinion, based on that and your
22 interactions with him, that he is an SNM Gang?

23 A. That's correct.

24 Q. Now, you said that he was China Town
25 Locos. Are there other China Town Locos that are

1 SNM Gang members?

2 A. Yes. It's pretty much --

3 THE COURT: Why don't you just answer
4 these "Yes" --

5 A. Yes.

6 THE COURT: -- or "No," and let Ms. Armijo
7 ask you questions.

8 BY MS. ARMIJO:

9 Q. Okay. And who does that include?

10 A. Well, there is maybe nine, 10 of them.
11 There is Archie Varela, Eddie Ortega, Allen
12 Patterson, a guy name Salvador, which goes by the
13 name of Doosky, Billy Blackburn --

14 Q. A different Billy Blackburn than the
15 attorney here in court?

16 A. That's correct.

17 Q. Okay.

18 MR. SINDEL: Are you sure about that?

19 MR. BLACKBURN: Can we take about a
20 10-minute break?

21 THE WITNESS: Do you want me to call you
22 "carnal"?

23 BY MS. ARMIJO:

24 Q. All right. A different Billy Blackburn?

25 A. Right.

1 Q. Steve Morales?

2 A. Steven Morales, Steven Trujillo, which go
3 by the names of Cyclone and Cricket. Baby Joker,
4 Jaime Perez. A guy named Miguel Torres, Droopy.
5 And there might be one or two that I'm missing.

6 Q. All right. Even though you were rival
7 gang members with them on the streets, now that
8 you're SNM, you get along?

9 A. It was hard, but yes. Yes.

10 Q. Hard for you?

11 A. It was hard for me. There were times that
12 it was hard.

13 Q. But did you do that?

14 A. I did do it for the organization, yes.

15 Q. Edward Troup. Do you know Edward Troup?

16 A. Yes, I'm aware of him.

17 Q. And do you see him in the courtroom today?

18 A. Yes, I do.

19 Q. Where is he?

20 A. He's sitting in front of Joe Gallegos.

21 Q. And what is he wearing?

22 A. A gray-ish striped shirt.

23 MS. ARMIJO: May the record reflect
24 identification of Edward Troup?

25 THE COURT: The record will so reflect.

1 Q. And is he an SNM Gang member?

2 A. Yes, he is.

3 Q. When did you meet -- does he have a
4 nickname?

5 A. Huero Troup, or The Carcass.

6 Q. When did you meet him?

7 A. I met him officially around 2008, but he
8 was in the same facility that I was at when at the
9 Level 6, North facility.

10 Q. Now, did he ever -- when you were -- in
11 2001, when you were at the Level 5 facility, which
12 would have been the South, did he ever bring drugs
13 to you?

14 A. Yes. When he was transferred from Level 6
15 South facility, he was given drugs by Eric Duran,
16 and was instructed to give me about three or four --

17 MR. BURKE: Objection, Your Honor. Can we
18 approach?

19 THE COURT: Hold on. Mr. Burke?

20 MR. BURKE: Can we approach?

21 THE COURT: You may.

22 (The following proceedings were held at
23 the bench.)

24 MR. BURKE: Your Honor, there is no
25 discovery on this. It's a bad act, and they're

1 required to give me evidence of bad acts. I have
2 scoured his reports. And there is one reference to
3 Troup in the reports, and it was at the time of when
4 they were incarcerated together during this case,
5 and I was getting ready to object about that.
6 Because that was about the attorney-client
7 relationship.

8 So this is just a sneak attack, pretty
9 typical. And it's not part of any enterprise
10 evidence that they've provided before.

11 THE COURT: Let's see what --

12 MR. BURKE: See if I'm wrong. I could be.

13 MS. ARMIJO: In addition to that, Your
14 Honor, I believe that when we went over bad acts,
15 and we were talking about them, the Court had
16 generally ruled that we would have -- we were to get
17 in -- drug activity is racketeering activity; that
18 we can bring out incidents of drug activity. The
19 Court made that very clear, that since drugs are
20 part of the SNM, that we would be allowed to bring
21 in this. And here is an incident of one SNM
22 bringing another SNM drug activity from a third SNM
23 person.

24 And I will look at the report. But that's
25 what the Court ruling is.

1 MR. BURKE: I doubt very much that that's
2 what the Court ruling is. I remember standing up
3 here, and you said, "Okay, if you're going to add
4 stuff, you've got to let them know."

5 THE COURT: Well, the drug stuff we have
6 been treating differently, because everybody had so
7 many on their 404(b) list, they had so many drug
8 charges. I think what we generally did with all the
9 defendants -- and I can't remember specifically with
10 Mr. Troup -- is that we were going to, instead of
11 sitting here and bringing in 10 drug transactions,
12 if the defendants weren't going to dispute it, then
13 there would be some evidence of drug activity with
14 each defendant, and then we would move on.

15 You know, I think the Government has a
16 right to establish the SNM people being involved in
17 drugs. And then also each person. But we aren't
18 going to spend a lot of time doing it.

19 Was this one of the incidents that was on
20 the 404(b) list?

21 MS. ARMIJO: Your Honor, I don't think
22 that it was.

23 MR. BURKE: No, it wasn't.

24 MS. ARMIJO: And I'm trying to see where
25 it was. Here it is, right here. 61850. There is a

1 paragraph. It's Bates 61850: "Rodriguez was housed
2 with Edward Troup from 2005 to 2008. Troup is an
3 SNM member. In 2011, Troup brought marijuana to
4 Rodriguez provided by Eric Duran, a/k/a Crazo."

5 And, Your Honor, because -- and this is
6 from March 23, 2018. It was disclosed shortly after
7 that. And given the Court's ruling about drug
8 activity, that's why it is being brought out.

9 MR. BURKE: Your Honor, the lead-in to
10 that was in 2008, so they don't have it right.

11 MS. ARMIJO: No, it says 2011.

12 MR. BURKE: I know, but that's not what
13 the question was. It was 2008. And it was a
14 suggestion that it was hard drugs. And if they're
15 going to try to introduce the marijuana, they should
16 have put that on the bad acts thing. It marijuana.

17 MS. ARMIJO: He said "marijuana." I
18 thought that's what he testified to.

19 THE COURT: Let's just see what he said.

20 MS. ARMIJO: I apologize. That was me
21 trying to be leading.

22 MR. BURKE: You still have to be accurate.

23 THE COURT: I'm not seeing a specific
24 reference to "marijuana." I'm seeing reference to
25 "drugs." I don't see specifically "marijuana."

1 MR. BURKE: If he wants us to get Edward
2 Troup bringing in marijuana in 2011, I've got a
3 riff. That's really my point.

4 THE COURT: Do you want to clean it up a
5 little?

6 MS. ARMIJO: Certainly, Your Honor.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: All right. Ms. Armijo.

10 BY MS. ARMIJO:

11 Q. Mr. Rodriguez, was it marijuana that was
12 sent to you or brought to you by Edward Troup?

13 A. Yes, ma'am.

14 Q. And just so that we're clear, what year
15 was that in?

16 A. 2011.

17 Q. All right. I think I may have misspoke
18 about that.

19 Let me figure out where I was here.

20 Christopher Chavez. Do you see him in the
21 courtroom today?

22 A. Yes, I do.

23 Q. Where is he?

24 A. He's in between Andrew Gallegos and Arturo
25 Garcia, in a grayish suit with a blue tie.

1 MS. ARMIJO: May the record reflect the
2 identification of Christopher Chavez?

3 THE COURT: The record will so reflect.

4 Q. Is Christopher Chavez an SNM Gang member?

5 A. Yes, ma'am.

6 Q. When was it -- did you know him before
7 this case or after this case?

8 A. I knew of him before. I met him before
9 this case, and I knew of him before I met him, yeah.

10 Q. Okay. And what is his nickname?

11 A. Critter.

12 Q. And do you know where he is from?

13 A. He's from Albuquerque, from the Barelás
14 Gang.

15 MS. ARMIJO: Now, I'm just looking for
16 something. If I may have a moment, Your Honor?

17 THE COURT: You may.

18 MS. ARMIJO: Let me circle something for
19 myself. I believe, Your Honor, at this time, I'd
20 like to move into admission exhibit numbers -- and
21 I've spoken to Mr. Billy Blackburn about this --
22 with no objections, 588, 589, and 863A.

23 THE COURT: 863A?

24 MS. ARMIJO: Yes.

25 THE COURT: Any objection from the

1 defendants? Mr. Blackburn? Anybody else? Any
2 objection? All right. Not hearing any,
3 Government's Exhibits 588, 589, and 863A will be
4 admitted into evidence.

5 (Government's Exhibits 588, 589, and
6 863A admitted.)

7 BY MS. ARMIJO:

8 Q. Now, was there such a thing as
9 inter-prison mail?

10 A. Yes, there was.

11 Q. Did it stop at some point here in the
12 recent future (sic)?

13 A. Yeah, it stopped. I don't know what year
14 it stopped. But they discontinued it.

15 Q. And before then, were you allowed to send
16 mail to other inmates?

17 A. Yes.

18 Q. Would this include mail to inmates at
19 different facilities?

20 A. Different facilities across the state of
21 New Mexico, yes.

22 Q. Would it also allow you to send mail to
23 people at the same facility, but in a different
24 unit?

25 A. Yes. South to North; 3-B to 3-A; 1-A to

1 1-B. It's just inter-prison mail.

2 Q. And did you actually write mail?

3 A. Yes.

4 Q. Did you receive mail?

5 A. Yes, I did.

6 Q. Did you receive specifically mail from
7 Arturo Garcia?

8 A. Yes.

9 Q. Now, you mentioned yesterday an incident
10 about where you had actually been involved with
11 bringing drugs into the prison; is that correct?

12 A. That's correct.

13 Q. Did that involve Arturo Garcia?

14 A. Yes.

15 Q. For any one particular incident?

16 A. Any one particular incident?

17 Q. Well --

18 A. There was numerous, but --

19 Q. Yes. And I guess I should ask this
20 question: Did you ever use drugs?

21 A. Yes.

22 Q. When did you -- as far as once you went
23 into the Corrections Department, did you continue to
24 use drugs?

25 A. Yes, I did.

1 Q. Have you stopped using drugs?

2 A. I haven't used drugs in, I think -- I'm
3 close to a year.

4 Q. Okay.

5 A. Ten and a half months.

6 Q. Okay. And did you in general stop using
7 drugs -- you say a year or 10 months?

8 A. Around there.

9 Q. So were you still -- and so you have not
10 used drugs since you began cooperating on October
11 24th of 2017?

12 A. No, ma'am.

13 Q. So were you still able to use drugs while
14 you were pending, while you were still fighting your
15 charges in this case?

16 A. Yes.

17 Q. Did your drug use at any point change? In
18 other words, did you use drugs more heavily at some
19 point, and then less frequently?

20 A. Yes, less frequently towards -- I had a
21 little political battle with another SNM member over
22 a gram of heroin, and when that went through, I just
23 discontinued, really, in the drug trade a little
24 bit.

25 Q. Okay. What year was that, approximately?

1 A. I was in W pod, so it was like -- I can't
2 tell you the year.

3 Q. Was it more than three years ago?

4 A. Yes.

5 Q. Was it before the charges in this case?

6 A. Yes.

7 Q. Was it before you went to Southern?

8 A. Yes. It got resolved in Southern.

9 Q. So it was before the Javier Molina murder?

10 A. Yes, ma'am.

11 Q. We were talking about inter-prison mail.

12 I'm first going to show you Exhibit 588. What is it
13 that we're looking at?

14 A. A letter, inter-prison mail from Arturo
15 Garcia to me.

16 Q. It says on the first page "Arturo Garcia,"
17 and it has his inmate number?

18 A. That's correct.

19 Q. It has "Cell 3-B." Would that be where he
20 was housed?

21 A. Yes.

22 Q. He was in the South facility?

23 A. Yes, ma'am.

24 Q. And then were you ever in the North
25 facility?

1 A. That's correct.

2 Q. And were you aware that your letters would
3 be confiscated and reviewed?

4 A. There was rumors it was being done, but
5 nobody believed it.

6 Q. Is that because you still received mail?

7 A. Yeah, that's correct.

8 Q. And so did you -- were there still -- when
9 you wrote letters, were you really obvious and
10 saying like, "This is being done for the SNM Gang,"
11 or, you know, "Bring me drugs," or anything? Or
12 were you trying to be a little bit more sneaky about
13 it?

14 A. That's correct. We never openly say
15 anything.

16 Q. Now I'm going to go to the second page of
17 this document. Give me a moment. All right. Do
18 you recognize this writing?

19 A. Yes. It's Arturo Garcia's.

20 Q. And that's consistent with the envelope
21 that it was from?

22 A. Yes, ma'am.

23 Q. The date on it is March 31st of 2010; is
24 that correct?

25 A. That's correct.

1 Q. And do you remember around that time
2 something going on in reference to drug activity
3 that you and Arturo Garcia were doing?

4 A. Yes. I contributed to helping paying a CO
5 to get a larger quantity of drugs for Arturo Garcia.

6 Q. So what happened as a result? Was that
7 actually successful at some time?

8 A. He was moved from the North Facility to
9 the South, so it was never successful.

10 Q. Okay. And did you actually put money into
11 it?

12 A. Yes. I believe I put \$200 into it.

13 Q. And who did you send that money to?

14 A. To -- I think I had a friend send it to
15 Eva Blakeman.

16 Q. And was she on the outside?

17 A. She was on the outside, yes.

18 Q. So you had somebody on your behalf send --
19 give money to a woman on the outside; correct?

20 A. That's correct.

21 Q. And what was the plan for her to do with
22 that?

23 A. Pay the officer, the CO.

24 Q. To bring in drugs?

25 A. That's correct.

1 Q. And was that the plan?

2 A. That was the plan.

3 Q. Did it ever work for a time period, or did
4 this particular plan not go very well?

5 A. It worked. It usually worked. This one
6 didn't work because he was moved. That's the only
7 reason it didn't go through. And in the process of
8 sending my money back, he got a disciplinary report.
9 And we're under investigation.

10 Q. By whom?

11 A. STIU, Security Threat Intelligence Unit.

12 Q. Okay. And I'm going to try and focus in
13 now on the second paragraph. Are you familiar with
14 Arturo Garcia's writing?

15 A. Yes, I am.

16 Q. Would he write to you often?

17 A. Yeah, he's a writer. He likes to write.

18 Q. I believe it says, "Over here this place
19 is a fucked clinic." Is that what it says?

20 A. A "fucken." It's F-U-C-K-E-N.

21 Q. Clinic?

22 A. Right.

23 Q. Okay. Now, was this after his move from
24 the North to the South?

25 A. Yes. He's referring to the South

1 facility. That's a fucken clinic.

2 Q. Then I believe right here where it says,
3 "A bunch" -- can you read what that says?

4 A. "A bunch of chicken shit tactics. But I
5 guess that's their jale, so fuck it."

6 Q. You mentioned "jale" before. What's jale?

7 A. A job.

8 Q. And what's a kite? What does this say
9 first, I guess?

10 A. Okay. It says, "I got moved to W pod, es
11 que, people were uncomfortable and kites were
12 flying."

13 Q. What's a kite?

14 A. Somebody who is nervous or someone who is
15 scared of another individual that arrives at a
16 facility, he drops a kite to STIU saying his life is
17 in danger or he's going to do something, so they
18 move that individual.

19 Q. All right. And can we go to the next
20 paragraph. Okay. Now, you mentioned that -- what
21 happened when there was an issue with your books?

22 A. STIU -- I received a money order, and STIU
23 deemed it from a different person than the name was
24 on the envelope. And they froze my books, and they
25 took the money.

1 Q. Okay. And is this in reference -- this
2 letter talks about that?

3 A. This letter is in reference to a box
4 number, which is probably the box number that I gave
5 them to my family, to send the money back. He's
6 asking me, "And let me know what's up, and if that
7 box number is still good in SC," which is Silver
8 City.

9 Q. Okay. Because what's the intent here?

10 A. To send money back to that address, to pay
11 me back my \$200.

12 Q. Okay. If we could go to the next two
13 paragraphs -- I believe they're short. Now, "these
14 people" -- what does this say here?

15 A. "These people hate us like fuck."

16 Q. Okay. And was this still part of the
17 conversation about what was going on with the money
18 situation?

19 A. It's referring to STIU and the Department
20 of Corrections administration.

21 Q. All right. Down here, I see something
22 about, "Amore, respecto, ain't never going to
23 change"?

24 A. Yes.

25 Q. And does that have any reference to SNM?

1 A. That's reference to that he's still going
2 to love and respect me, and ain't nothing going to
3 change. Because at the time, SNM members were
4 approaching him, saying, "You owe Blue money. Pay
5 him his money."

6 And I was never tripping on the money. I
7 was saying, "He just moved. He'll pay me back when
8 he gets a chance."

9 Q. Okay.

10 A. He was my big homie, and I wasn't tripping
11 on it, but carnals were going out of their way to
12 try to hit on him.

13 Q. Okay. Did you take that to mean that he
14 still loved you and respected you, and that wasn't
15 going to change?

16 A. That's correct.

17 MR. BLACKBURN: Objection, Your Honor;
18 speculation.

19 THE COURT: Well, he can give his
20 understanding of what was being communicated. Make
21 that clear, that that's his understanding.

22 Q. Was that your understanding?

23 A. Yes, ma'am.

24 Q. Okay. And then if we could go to the last
25 page. All right. And in this page, is he referring

1 to other SNM Gang members? It says, "Tell Churro
2 and Forrest I send my Amore"?

3 A. Yes.

4 Q. Who is Churro?

5 A. He's Sergio Rodriguez.

6 Q. Is that the same Churro that we talked
7 about earlier?

8 A. That's correct.

9 Q. And who is Forrest?

10 A. He's another carnal by the name of Israel
11 Garcia.

12 Q. All right. And I'm going to go now to
13 exhibit -- and the date on this one, if we could go
14 to the second page of this exhibit again, 588. And
15 if you could display 589. Oh, this is March 31,
16 2010.

17 Does this appear to be the envelope of a
18 letter sent to you from Arturo Garcia?

19 A. Yes.

20 Q. And it says "inter-pinta mail"?

21 A. Right.

22 Q. What is pinta?

23 A. It's prison.

24 Q. So was this something that was sent to you
25 when they were still doing the inter-pinta mail?

1 A. Yes, ma'am.

2 Q. If you could go to the second page of
3 that. This one -- I believe the last one was March
4 2010. What's the date of this one?

5 A. 5/4/2010.

6 Q. And is he writing you in this one, as
7 well?

8 A. Yes.

9 Q. Now, the first paragraph. What's the
10 first sentence?

11 A. "Q-Vo, mi Bluester. Hope this wilaso
12 finds you."

13 Q. Okay. "Q-Vo." What does that mean?

14 A. "Q-Vo" is "What's up?"

15 Q. And Bluester?

16 A. It was a nickname he gave me, the
17 Bluester.

18 Q. Is that because your nickname is Blue?

19 A. Right.

20 Q. And this wilaso. So what's a wilaso?

21 A. It's just slang for a letter.

22 Q. Okay. And go to the second paragraph
23 there. There is something about, "They gotta send
24 the receipts on all that." And then before that, he
25 says, "Si mon, I feel you on all the games and

1 bullshit."

2 Okay. Had you been conversing with him
3 about a situation?

4 A. Yes.

5 Q. Okay. What situation was that?

6 A. About books being frozen and carnals who
7 were coming to him, speaking on my behalf.

8 Q. Okay. Now, receipts. Was there something
9 that happened to your books? You said your books
10 were frozen. What do you mean by that?

11 A. When you get a receipt -- when you get a
12 money order in the mail, they give you a receipt to
13 verify that the money is put on your books. When I
14 received this money, I didn't get no receipt. It
15 just said it was being confiscated due to gang
16 activity.

17 Q. Okay. And so then was it your impression
18 that he was talking that "they gotta send you
19 receipts on all that stuff"?

20 A. Yes, and where it was sent back to.

21 Q. Had you received any notice of where it
22 was sent back to?

23 A. No. They never gave me no notice where it
24 was sent back to, or if they were going to send it
25 back out.

1 Q. All right. Then if we could now display
2 Exhibit Number 863A. You mentioned before an Eva
3 Blackman?

4 A. Blakeman.

5 Q. Blakeman. Sorry.

6 A. Right.

7 Q. An Eva Blakeman. And was that person the
8 one that was involved in your books being frozen and
9 the person that you were sending money out to?

10 A. Yes.

11 Q. All right. Do you know if she had a
12 nickname?

13 A. I think it was Sunshine or India, either
14 one they used.

15 Q. Okay. And does this appear to be a letter
16 from Arturo Garcia to her?

17 A. Yes, ma'am.

18 Q. Going to the second page of that. Does
19 this happen to be written on 2/8 of '11?

20 A. Yes.

21 Q. And it says "SS"; is that right?

22 A. Yes.

23 Q. And what do you believe the "SS" stands
24 for?

25 A. Sunshine.

1 Q. And at this point in time, was there some
2 things going on as far as the relationship with Eva
3 and the SNM?

4 A. Yes. She was -- most of the drugs were
5 going through her, and a few of his other friends.
6 But she was most -- she was the correspondence
7 through a lot of the carnals.

8 Q. So I'm going to go to the last page of
9 this exhibit. All right. Does this appear to be
10 signed by Shotgun Shorty?

11 A. Yes.

12 Q. And who is Shotgun Shorty?

13 A. Arturo Garcia.

14 Q. And I want to focus in on the bottom here,
15 if it can get blown up from about here, down.

16 "Don't forget I can touch you anytime I
17 feel the need to. Mad love baby."

18 Are you familiar with the SNM when
19 somebody says they can touch you?

20 A. Yes.

21 Q. And what does that mean?

22 A. It's that I can reach out and touch you at
23 any time, which is a threat of violence.

24 Q. Okay. So down here, he signs it. But it
25 says, "Loyalty, honesty, respect or death, ain't

1 nada changed"?

2 A. That's correct.

3 Q. And what does, "Loyalty, honesty, respect
4 or death" mean within the SNM?

5 A. It means at the time, if you betray any
6 one of those, loyalty, honesty, or respect, then
7 you're going to die.

8 Q. At the time that this was written, were
9 there some things going on as far as the drug
10 activities, and other SNM members with Eva and
11 Arturo Garcia?

12 A. Yes.

13 Q. Now, I'm just going to just show you some
14 other exhibits.

15 MS. ARMIJO: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 Q. And this is just for identification
19 purposes. All right. I'm showing you Exhibit
20 Number 866. Do you see that item?

21 A. Yes, ma'am.

22 Q. Okay. And are you familiar with the
23 writing, the person's writing?

24 A. It looks -- I'm familiar with the writing
25 that I received from her, yes.

1 Q. And whose writing? Can you identify this?

2 A. Eva Blakeman.

3 Q. All right. And I'm going to Exhibit 865.

4 Are you familiar -- which is a letter that appears
5 to be addressed to you; is that correct?

6 A. Yes, ma'am.

7 Q. And who wrote you that letter?

8 A. I believe Eva Blakeman.

9 Q. And going to Exhibit Number 863B. Do you
10 see that?

11 A. Yes.

12 Q. And do you recognize the writing in this
13 letter?

14 A. Yes.

15 Q. And how do you know the writing?

16 A. It's Arturo Garcia's writing, and I know
17 it because he's written me letters before.

18 Q. Okay. And you said he was a big writer?

19 A. Right.

20 MR. LAHANN: May we have a Bates number
21 for that, please?

22 THE COURT: Which one? All three?

23 MR. LAHANN: Yes, Your Honor.

24 MS. ARMIJO: 866 starts at 5366. And I'll
25 have these -- I'm not moving these into admission

1 right now, just for identification purposes.

2 8645 begins at Bates DeLeon, 10163.

3 Exhibit 863B is DeLeon Bates 25567,
4 continues there for three pages.

5 BY MS. ARMIJO:

6 Q. All right. Going to Exhibit Number 864,
7 which is DeLeon Bates 25571, which is a letter. Do
8 you recognize the writing in this letter?

9 A. Yes. Yes, I do.

10 Q. Who is the author of that letter?

11 A. Arturo Garcia.

12 Q. 871A, which is Bates 14955 beginning. Can
13 you see the writing of that letter?

14 A. Yes. It's Arturo Garcia.

15 Q. And Exhibit 867, which is Bates 10244?

16 A. Arturo Garcia.

17 Q. Arturo Garcia wrote that letter?

18 A. Yes, ma'am.

19 Q. All right. Now, I believe you testified
20 that you didn't believe you could ever renounce
21 because with the RPP Program, you wouldn't have been
22 accepted. Okay. What is your belief as to why you
23 wouldn't have been accepted?

24 A. Because I already had a reputation
25 throughout the Department of Corrections, within the

1 administration, and the inmates in the prison
2 system. I just -- I put in a lot of work. I had a
3 lot of violence on my jacket. All my stuff was
4 institutional violence. And even to this day,
5 people can't believe that I left the SNM, you know.

6 Q. So was there a fear that you would have
7 been faking just to get there?

8 A. I think it wasn't faking.

9 MR. SINDEL: I object to someone else's
10 fear. I don't know how he can know that. Although
11 it could be obvious.

12 THE COURT: Well, he's explaining why he
13 didn't think he would be accepted. So these aren't
14 necessarily the truth. They're just simply his
15 fears and why he didn't go that route; he went the
16 federal route.

17 So I'll allow the testimony, but it's not
18 evidence of what other people were thinking.

19 MR. SINDEL: Thank you, Your Honor.

20 BY MS. ARMIJO:

21 Q. Go ahead.

22 A. Where were we at?

23 Q. We were at the RPP. You said that you
24 didn't think that they would take you seriously.

25 A. Well, the Department of Corrections told

1 me they wouldn't, when I said that I wanted to leave
2 that in the past. After I debriefed on October 24th
3 of last year, I brought it up that I wanted to leave
4 a long time ago, and they told me, "We'd have never
5 let you go."

6 MR. SINDEL: Objection; hearsay.

7 THE COURT: Sustained.

8 Q. I just wanted to get into what your belief
9 was.

10 A. Okay.

11 Q. Now, we talked about -- you testified that
12 you brought shanks into court with you. Why did you
13 bring shanks into court with you?

14 A. Because I was going to stab another SNM
15 member.

16 Q. Okay. And who was it -- did you -- do you
17 carry shanks -- you said you were going to stab
18 another SNM member. Who was that member?

19 A. Mauricio Varela.

20 Q. Now, do you also -- was there any other
21 purpose as far as protection?

22 A. I carry shanks like that for -- when we're
23 being transported all over the place, we run into
24 enemies every once in a while, and we don't go with
25 no property. And it would uplift the SNM. If we're

1 in intake, and you have no property on you, and I
2 come out with a weapon and I stab you, it's going to
3 promote the fear in the institution that the SNM
4 will get you anytime, anyplace, with anything.

5 Q. Is that why you wanted to always have a
6 shank with you?

7 A. That's why I always wanted to have a shank
8 with me. That and protection, yes.

9 Q. Now, did you -- all the stuff that you --
10 that you testified about, from the Esparza to the
11 Sosoya to the Molina incident, did you do these
12 things because it was expected of you?

13 A. Yes.

14 Q. And what happens -- and I'll go into the
15 Molina a little bit more. But with the Molina
16 incident, you talked about Daniel Sanchez. Did he
17 give you directions on what to do?

18 A. Yes.

19 Q. Did you follow those directions?

20 A. I did.

21 Q. And what would have happened if you didn't
22 follow those directions?

23 A. I would have been killed.

24 Q. Did you have any problem with following
25 his directions?

1 A. No, I did not.

2 Q. Did you want to follow his directions?

3 A. Yes, I did.

4 Q. Now, as far as what he told you to do, did
5 that involve -- what did he tell you to do as far as
6 other people that were involved in the murder in the
7 pod?

8 A. To let Timothy Martinez know what he was
9 going to have to do; and to give the weapon to Jerry
10 Montoya and let him know where the murder was going
11 to take place. And he told me to give the paperwork
12 back to Carlos Herrera and let him know, after the
13 plan was set, to let him know after quinta it would
14 take place. And to make sure it happened right,
15 make sure it went right.

16 Q. Okay. So you're getting this direction
17 from Daniel Sanchez, and you did it at his
18 direction?

19 A. Yes, ma'am.

20 Q. Did you in fact do those things?

21 A. I did.

22 Q. So you had to be the one to tell Tim
23 Martinez to participate in that?

24 A. That's correct.

25 Q. And did you tell Jerry Montoya that he had

1 to participate?

2 A. Yes.

3 Q. Did you tell Jerry Armenta he had to
4 participate?

5 A. No, I did not.

6 Q. And were you to make sure that it, being
7 the murder, were to take place?

8 A. Yes.

9 Q. And did that include even getting Javier
10 Molina in the room, and being there to make sure
11 that it took place?

12 A. Yes. We got him in the room under the
13 guise of getting high on Suboxone, and it was pretty
14 much a distraction, to choke him out and then
15 eventually kill him.

16 Q. Where was Daniel Sanchez when all this was
17 taking place?

18 A. On the lower level of the tier, in front
19 of the camera.

20 Q. So he did not -- he did not go up to the
21 cell or take an active role as far as when the
22 actual murder was occurring?

23 A. No.

24 MS. ARMIJO: If I may just have a moment,
25 Your Honor?

1 THE COURT: You may.

2 Q. And how much notice did you give Jerry
3 Montoya and Timothy Martinez that they were going to
4 participate in the murder that day?

5 A. Timothy Martinez got about an hour and 15
6 notice. And Jerry Montoya got the weapon put in his
7 hand and told him to go, "It's time to go, let's
8 go."

9 Q. And that was the notice that they were
10 given?

11 A. Yes.

12 MS. ARMIJO: Nothing further. Thank you.

13 THE COURT: Thank you, Ms. Armijo.

14 Cross-examination, Mr. Lahann?

15 MR. LAHANN: If I may.

16 CROSS-EXAMINATION

17 BY MR. LAHANN:

18 Q. Honesty. That's something that you try to
19 live by?

20 A. Yes.

21 Q. Well, was it honest when you left the work
22 detail that you were on the honor system to return
23 to jail?

24 A. No.

25 Q. This was before you were SNM, right?

1 A. That's correct.

2 Q. You were dishonest in walking away that
3 day, weren't you?

4 A. No.

5 Q. You were dishonest the day that you took a
6 piece of metal, told everybody you were trying to
7 kill yourself, so they would take you to the ER, so
8 that you could skip. That wasn't honest, was it?

9 A. I think you're confusing two different
10 escapes.

11 Q. Two different escapes. Which one were you
12 honest about?

13 A. As far as what?

14 Q. Neither one was honest, was it?

15 A. I think the first one was honest.

16 Q. Was it honest when you put a full soda can
17 into a sock and hit a corrections officer with it?

18 A. I don't know if there is truth or honesty
19 there. I don't know what you're --

20 Q. You were hiding the soda can in a sock?

21 A. It was a weapon, yes. I turned the soda
22 can into a weapon, yes.

23 Q. The corrections officer had no idea it was
24 coming, did he?

25 A. He didn't ask me.

1 Q. You brought -- can we see 874, please.
2 Now 875, please. Was it honest when you put those
3 weapons into your anus, brought them from a facility
4 into a Federal Courthouse to commit murder in front
5 of a federal judge? Was that honest?

6 A. I don't know. I don't find dishonesty in
7 it.

8 Q. No dishonesty at all?

9 A. No one ever asked me about it or no one
10 questioned me about it, so there is no --

11 Q. You have a hard time understanding what's
12 honest and dishonest, don't you?

13 MS. ARMIJO: Objection; argumentative.

14 A. No. No, sir.

15 THE COURT: Overruled.

16 MR. LAHANN: It's a question.

17 BY MR. LAHANN:

18 Q. Was it honest when you took facts of the
19 case so that you could write a statement to get
20 somebody off on a murder charge?

21 A. I don't know.

22 Q. Mr. Esparza owed you money; is that right?

23 A. That's right.

24 Q. And so in another act of dishonesty, you
25 hid in a shower stall so that you could ambush the

1 man, handcuffed behind his back; isn't that right?

2 A. No. I told him I was coming for him.

3 Q. Nonetheless, you were able to hide in that
4 shower? The corrections officer had no idea you
5 were there, did he?

6 A. I do not know.

7 Q. Do you see on the film -- and apparently
8 you've seen the film many, many, times because you
9 had to correct Ms. Armijo as to the time stamp. The
10 first thing the corrections officer did is to run
11 away when you came out with that shank, isn't that
12 right?

13 A. That's correct.

14 Q. That corrections officer had no idea you
15 had a shank that day, did he?

16 A. I don't know.

17 Q. He led poor Mr. Esparza almost to his
18 death, didn't he?

19 A. I don't know if he was poor Mr. Esparza,
20 but he led an inmate to his death, yes.

21 Q. That's not honest, is it?

22 A. It's prison. That's honesty in prison.

23 Q. It was a punk move, wasn't it?

24 MS. ARMIJO: Objection; argumentative.

25 THE COURT: Overruled.

1 Q. It was a punk move to do that, wasn't it?

2 A. What's your definition of "a punk move"?

3 Q. You tell me what a punk is.

4 A. A punk is -- hmm. Somebody who can't
5 defend himself. Somebody who can't stand up for
6 themselves. Somebody who is not willing to stand up
7 for themselves.

8 Q. So there is more honor in hiding a shank,
9 hiding in a stall, and going after a poor man who is
10 handcuffed and can't defend himself; is that right?

11 A. That's correct.

12 Q. That's what you think is honest?

13 A. Honest to the SNM, yes.

14 Q. You said you got love after stabbing poor
15 Mr. Esparza and trying to chew his ear off; isn't
16 that right?

17 A. Yes, sir.

18 Q. You got gifts, right?

19 A. That's correct.

20 Q. A TV; isn't that correct?

21 A. That's correct.

22 Q. You're expecting love from the Government,
23 aren't you?

24 A. No.

25 Q. You want to be out on the streets again,

1 don't you?

2 A. If the 5K -- if the 5K goes through and
3 the judge allows it, then I guess someday I'll be
4 out on the streets, yes.

5 Q. You have a dream of getting back out on
6 the street and raising children, don't you?

7 A. Someday, yes.

8 MR. LAHANN: No further questions.

9 THE COURT: Thank you, Mr. Lahann.

10 Who else? Mr. Castle, do you wish to
11 cross-examine Mr. Rodriguez?

12 CROSS-EXAMINATION

13 BY MR. CASTLE:

14 Q. Mr. Rodriguez, you shared with this jury
15 some statements about a moment where you decided you
16 were going to give up gang life and provide
17 information to the Government?

18 A. That's correct.

19 Q. I want to talk to you a little bit about
20 when that was. Was it before the indictment came
21 down?

22 A. No.

23 Q. Was it when the indictment came down?

24 A. During the process of indictment.

25 Q. Well, it wasn't when you were charged?

1 You were brought into the courthouse, right, and
2 given an attorney. You didn't have this moment of,
3 I guess, change of heart when that happened?

4 A. It had been contemplated for the past
5 maybe three or four years.

6 Q. And, in fact, when you decided to do it
7 was when you were on the verge of going to trial,
8 correct?

9 A. That's correct.

10 Q. So this epiphany that you had that you
11 wanted to change your life happened when you were
12 looking down, literally, the barrel of a life
13 sentence at trial?

14 A. That's incorrect.

15 Q. Well, you were looking at how long?

16 A. At that time?

17 Q. Yes.

18 A. Twenty years, 30 years.

19 Q. And your co-defendant in that case was a
20 guy by the name of Baby Rob Martinez, right?

21 A. Yes.

22 Q. And he had already pled and agreed to
23 testify against you?

24 A. Yes.

25 Q. And I think you talked about a tabla that

1 you were part of?

2 A. No, I was not part of a tabla.

3 Q. Oh, you were, I guess, loyal to?

4 A. Right.

5 Q. That tabla had people like Styx Archuleta
6 in it?

7 A. That's correct.

8 Q. He'd already turned and was agreeing to
9 testify against you?

10 A. No.

11 Q. How do you know?

12 A. He wasn't testifying against me.

13 Q. How do you know?

14 A. Because I seen the witness list.

15 Q. Okay. So you were concerned about it,
16 though?

17 A. No. He didn't have nothing to testify
18 against me on.

19 Q. He couldn't talk about, let's say, the
20 fact that you guys got together and decided to
21 murder Billy Garcia? He wouldn't be able to tell
22 the jury about that? Strike that.

23 In any event, you were the last one
24 standing in your case when you decided to make this
25 change?

1 A. I didn't decide to make it while I was in
2 the courtroom. But yeah, I was by myself in that
3 trial.

4 Q. Okay. The last one standing?

5 A. Yes.

6 Q. How many different occasions have you come
7 to the Federal Courthouse before you had this
8 epiphany of you wanted to change? Actually, let me
9 put this a different way.

10 When you made that decision to change, it
11 came with a big caveat, right, that the Government
12 had to agree to this 5K motion?

13 A. I don't think they have to agree to it,
14 no.

15 Q. Well, they put it in paperwork that they
16 could file one for you, right?

17 A. Based on, I guess if they have a feeling
18 one day they don't want to file it, I guess they
19 don't have to file it. I don't know.

20 Q. In any event, your change of heart had
21 some conditions put into a plea agreement?

22 A. My change of heart had to do with getting
23 out of gang life.

24 Q. Now, how many times did you come to the
25 courthouse with shanks hidden in your body or on

1 your person?

2 A. I can't say.

3 Q. Numerous times?

4 A. I don't know how many times I came to
5 court.

6 Q. But more than once?

7 A. Oh, yes. Yeah. Let's just say every time
8 I came to court, I had a weapon on me.

9 Q. Prior to this change of heart and pleading
10 guilty, some of the times you went to court, you had
11 individuals from other cases in the same courtroom?

12 A. That's correct.

13 Q. Including these defendants?

14 A. Yes.

15 Q. Including Billy Garcia?

16 A. Including Billy Garcia, yes.

17 Q. Now, until you had this change of heart
18 and went in for the debriefing, it's your testimony
19 that you would kill or had orders to kill Billy
20 Garcia, right?

21 A. That's correct.

22 Q. You didn't get the opportunity, I take it,
23 when you were in Federal Court with him?

24 A. All hits were called off at that time.

25 Q. When did the hits get called off?

1 A. I think when they were in Estancia. They
2 didn't want no added heat to the SNM.

3 Q. So you called off the hits?

4 A. No, I wasn't a part of that.

5 Q. But you brought shanks to Court with you?

6 A. Yes.

7 Q. In the presence of other defendants?

8 A. Yes.

9 Q. By the way, I take it that one of the
10 reasons you would carry shanks in prison is so that
11 you could, in fact, kill people that there were hits
12 on, right?

13 A. Yes.

14 Q. And did you get prosecuted for conspiracy
15 to murder Julian Romero?

16 A. I never conspired to kill him, murder him.

17 Q. Conspiracy is an agreement between more
18 than one person, right?

19 A. That's correct.

20 Q. And you have to do something in
21 furtherance of that, right?

22 A. That's correct.

23 Q. So you had agreed that you would kill
24 Julian Romero and Billy Garcia, correct?

25 A. That's correct.

1 Q. And you carried knives in the event that
2 the opportunity arose?

3 A. Not specifically for them, but --

4 Q. For many people?

5 A. Yes.

6 Q. So did you get prosecuted for that?

7 A. I don't think any of the defendants did.

8 Q. I'm asking whether you did, sir?

9 A. No.

10 Q. Was that something that was specifically
11 negotiated, that the life of Mr. Garcia and Mr.
12 Romero weren't important enough to have you plead
13 guilty to it?

14 A. Negotiated how?

15 Q. Well, was that part of your plea
16 agreement? Did you plead guilty to it?

17 A. I was never charged with it.

18 Q. You told us today about some statements
19 that Mr. Garcia had with you sometime, I believe, in
20 2008? Is what you said?

21 A. A little bit, yeah, 2008. I can't say
22 what month or nothing, but 2008.

23 Q. And that was at the Penitentiary of New
24 Mexico?

25 A. After the Robert Esparza stabbing, yes.

1 MR. CASTLE: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 Q. Before I do, do you have any weapons on
5 you today?

6 A. Want to take me to the x-ray machine?

7 MR. CASTLE: I have the right to ask, Your
8 Honor.

9 THE COURT: Overruled.

10 A. Do you want to take me to an x-ray
11 machine?

12 Q. I'm asking you, do you have one on you
13 today?

14 A. No, sir. There is honesty for you.

15 MR. SINDEL: Your Honor, I'm going to
16 object.

17 MS. ARMIJO: Mr. Castle --

18 THE COURT: On the defendant's
19 cross-examination, just answer their questions, and
20 don't add anything. If Ms. Armijo wants to bring
21 anything out on redirect, she can.

22 THE WITNESS: Okay.

23 BY MR. CASTLE:

24 Q. Sir, when you came into the federal
25 courthouse -- while they're looking at your

1 statements -- when you came into the federal
2 courthouse and brought those weapons in, there
3 wasn't just defendants in the courtroom; there were
4 lawyers like me, right?

5 A. That's correct.

6 Q. We were all in danger of you?

7 A. Did you have a hit on you?

8 Q. I don't know. I suppose I will after
9 today.

10 Mr. Rodriguez, the first time you spoke to
11 the Government was on October 24th of 2017; correct?

12 A. That's correct.

13 Q. Can you take a look at the document. Is
14 that a summary of your statement that you made on
15 that day?

16 A. Yes.

17 Q. Okay. Recite and tell the jury whether
18 there is anything -- let me ask you, how long did
19 the debriefing go?

20 A. I don't know.

21 Q. Was it long?

22 A. Well, it's nine pages, so --

23 Q. A couple hours?

24 A. Probably.

25 Q. And during the debriefing, they asked you

1 about the SNM; correct?

2 A. That's correct.

3 Q. And they asked you about various murders
4 that you were aware of?

5 A. That's correct.

6 Q. And they talked to you about various
7 defendants in the case?

8 A. That's correct.

9 Q. And they gave you an opportunity to
10 basically spill the beans on everything that you
11 knew that you could think of?

12 A. No, this one was pretty much based around
13 Chulo and the details of the Molina murder and --

14 Q. Let me ask you if you can -- let me get
15 the document back, please.

16 There are sections on the Chulo assault,
17 correct?

18 A. That's correct.

19 Q. The Javier Molina homicide that you
20 committed, correct?

21 A. Correct.

22 Q. You were asked about the courtroom
23 activities?

24 A. That's correct.

25 Q. And there is a section about general SNM

1 information; is that right?

2 A. Let me see.

3 Q. I'm sorry?

4 A. Yes.

5 Q. And in that area, you're talking about who
6 the leaders are, various offenses, et cetera; is
7 that right?

8 A. Yes.

9 Q. Take a look in there and see if there is
10 anything you told them, anything about Billy Garcia
11 making a statement to you in 2008.

12 A. Under "general SNM info"?

13 Q. Anywhere in that whole document.

14 A. No.

15 Q. Good. The next time you talked to them
16 was on November 1st, 2017. And I'll give you a
17 document. It's 11 pages. It's a report, and then
18 there is some handwritten documents.

19 First of all, can you look at the report
20 and tell me --

21 A. If you put it right here so I can grab it.
22 What am I looking for?

23 Q. What's the date of the report?

24 A. 11/20/2017.

25 Q. Okay. Is that a report of your interview

1 and debriefing on that date with FBI agents and your
2 attorney present?

3 A. Yes.

4 Q. Then attached to that, they gave you an
5 opportunity to write out whatever you wanted to
6 write out about the SNM and various people; is that
7 right?

8 A. In reference to the Molina murder, yes.

9 Q. Okay. Flip through that and tell us if
10 there is anything in there about Billy Garcia and
11 this alleged conversation you had with him.

12 A. Yeah, I know there is not.

13 Q. Okay. I skipped over one. Here is one on
14 October 24th. Can you take a look at that?

15 A. October 24th?

16 Q. Yes.

17 A. I just looked at this one, didn't I?

18 Q. Did you? I apologize.

19 A. Yeah, that's the first one.

20 Q. November 17th, you had another interview,
21 it looks like with Agent Acee, Agent Stemo, Mark
22 Myers, Captain Sapien. Do you recall this interview
23 and did you -- first of all, do you recall that
24 interview?

25 A. I don't think this was an interview.

1 Q. What would you call it?

2 A. This was an individual who wanted to speak
3 to Bryan Acee, and he asked me if I can speak to
4 Bryan Acee, to introduce them to, and help him
5 attempt to negotiate a plea deal for he and his
6 brother.

7 Q. Okay. So there was a bunch of people from
8 the FBI and other people talking to you about some
9 stuff?

10 A. Talking to him, yes.

11 Q. And did you mention anything about this
12 discussion with Billy Garcia?

13 A. No. That was specific to the Sanchez
14 brothers.

15 Q. December 12, 2017, two officers by the
16 last names of Cupit and Sapien conducted another
17 interview with you. I'll show you a document. Take
18 a look at that. Is there anything about Billy
19 Garcia in there?

20 A. No, this was --

21 Q. I'm just asking if it's in there?

22 A. No.

23 Q. January 22, 2018, another time they talked
24 to you. Is there anything about Billy Garcia in
25 there?

1 A. No.

2 Q. Another one February 3, 2018. Who was
3 present for that interview?

4 A. Maria, Federal Bureau of Investigation.

5 Q. Is that Ms. Armijo?

6 A. Yes. What do you want me to do with this
7 one?

8 Q. Who else was present?

9 A. It doesn't say.

10 Q. Okay.

11 A. It says FBI personnel, United States
12 Attorney's Office.

13 Q. Any mention of the supposed conversation
14 with Billy Garcia in there?

15 A. I don't believe so.

16 Q. And I'm showing you probably about -- I
17 don't know -- 40, 50 pages; is that right?

18 A. I don't know.

19 Q. Well, what would you estimate it to be?

20 A. About 20.

21 Q. You didn't even have to read all 20 to
22 know that you didn't mention Billy Garcia in any of
23 those interviews, right?

24 A. That's correct.

25 Q. Because you knew that the first time you

1 decided to do that was on March 18th of this year?

2 A. I don't know the date.

3 Q. Was that after you got a new set of
4 payments from the Government?

5 A. From what?

6 Q. Well, from their kitty. I don't know
7 where it comes from. Their fund?

8 A. Their fund? Are you talking about the \$50
9 a month?

10 Q. Yeah.

11 A. No, I've been getting that.

12 Q. You haven't been getting any of that?

13 A. Yeah, I have.

14 Q. Mr. Rodriguez, we talked about the tabla,
15 right? It sounds like the two of the top people in
16 that tabla have pled out and have agreed to work for
17 the Government; is that right?

18 A. No.

19 Q. Styx and Baby Rob?

20 A. No.

21 Q. You didn't know that?

22 A. Arturo -- I mean Baby Rob wasn't one of
23 the top ones, no.

24 Q. Okay.

25 A. He was on the tabla, but he wasn't one of

1 the more --

2 Q. Okay. And then, you were a hired killer
3 for them?

4 A. A hired killer for those two individuals?

5 Q. For the tabla?

6 A. Yeah, I guess so. Not hired. They didn't
7 pay me.

8 Q. And you-all are going into federal custody
9 now, right?

10 A. That's correct.

11 Q. Are you going to get the gang back
12 together?

13 A. I'm a cooperator now. I left the SNM.
14 Why would I get the gang back together? I would
15 have been one of the ones --

16 Q. I'm just asking a question.

17 A. No.

18 Q. But it seems like the Styx organization is
19 all going to a different location, isn't it?

20 A. I don't know.

21 MR. CASTLE: No further questions, Your
22 Honor.

23 THE COURT: Thank you, Mr. Castle. Anyone
24 else? Mr. Sindel, do you have cross-examination of
25 Mr. Rodriguez?

1 MR. SINDEL: I do, Your Honor.

2 THE COURT: Mr. Sindel.

3 MR. SINDEL: Thank you.

4 CROSS-EXAMINATION

5 BY MR. SINDEL:

6 Q. Mr. Rodriguez, my name is Richard Sindel.
7 I represent Joe Gallegos. If you could listen to my
8 questions for a bit. If there is anything in a
9 question that I ask you and you're not sure you
10 understand, please stop me, will you?

11 A. Yes, sir.

12 Q. If I use any words you're not familiar
13 with, please stop me. Okay?

14 A. Yes, sir.

15 Q. Okay. Do we have an understanding in that
16 regard?

17 A. Yes, we do.

18 Q. Now, you have these tablets we've heard
19 referred to in your possession, not right there, but
20 every time when you go home?

21 A. Yes, sir.

22 Q. And those tablets contain every one of the
23 statements that Mr. Castle referred to, all those
24 reports involving you, right?

25 A. My tablet has that?

1 Q. Yes.

2 A. No, it did does not.

3 Q. It doesn't?

4 A. My tablet hasn't been, I guess -- what
5 would it be called?

6 Q. Updated?

7 A. Updated since I left the SNM.

8 Q. All right. Since you left the SNM?

9 A. Yeah. I wasn't there for the last update.

10 Q. Okay. Did you receive the -- have you
11 read the October 24, 2017, FBI report?

12 A. By Nancy Stemo?

13 Q. Yes.

14 A. Yes. Yes, I read it.

15 Q. So it was updated to read that. Did you
16 read the --

17 A. Oh, you're talking about in the tablet?

18 Q. Yes.

19 A. Oh, no, no, no. It wasn't in the tablet.
20 I read that right now, and then the next time I sat
21 down with them to, I guess, go over any
22 discrepancies in it.

23 Q. So when you sit down with them, they can
24 go through with the previous statement that you've
25 made, right?

1 A. That's correct.

2 Q. And you could read them? You could either
3 correct them or you can make additions, whatever it
4 may be, but you have that opportunity, correct?

5 A. That's correct.

6 Q. And you've done that in this case, haven't
7 you?

8 A. As far as what?

9 Q. Well, have you gone through some of the
10 documents that they have, and you've made changes in
11 them, handwritten changes, right?

12 A. I think to one of them.

13 Q. Okay. And you've also made handwritten
14 additions to some of them; isn't that correct?

15 A. That's correct.

16 Q. And, in fact, in one of the handwritten
17 additions, you've indicated what it is you want from
18 the Government?

19 A. I don't remember.

20 MR. SINDEL: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. I'll show you what's been a November 1,
23 2017, interview with you; is that right?

24 A. That's correct.

25 Q. And this particular interview goes into

1 gang background, ideology, and other matters; is
2 that right?

3 A. Yes, sir.

4 Q. And then attached to this is a handwritten
5 statement that you had prepared, with additional
6 information, right?

7 A. Yes.

8 Q. And I'm going to refer you to page 9 of
9 this handwritten statement. Is that your
10 handwriting?

11 A. Yes, that's my handwriting.

12 Q. And it says that you're hoping to get
13 witness protection, right?

14 A. Yes.

15 Q. Witness protection and a new identity,
16 right?

17 A. Yes, that's what it says.

18 Q. So that you don't have to be who you
19 really are in that witness program, correct? You'd
20 have a new name?

21 A. Yes.

22 Q. So one of the things -- and this is the
23 list of some of the either demands or requests that
24 you're making of them in order to fulfill your
25 obligation to testify here today and in any other

1 proceedings?

2 A. That was one of the requests, yes.

3 Q. Okay. And that is page 9, item 22?

4 A. That's page 9, yes.

5 Q. And page 10 has a couple of other items
6 that you have referenced. It's a little hard to
7 read, isn't it?

8 A. Yes.

9 Q. But it has a number of cause numbers from
10 the state cases?

11 A. Yes.

12 Q. And it has "50 percent" written next to
13 that, right?

14 A. Yes.

15 Q. That is, you want a sentence that's 50
16 percent or you want a reduction of 50 percent of
17 those sentences?

18 A. That's incorrect.

19 Q. Well, what does that 50 percent refer to?

20 A. That 50 percent is referring to my first
21 J and S, which was 50 percent plea agreement. So
22 I've got to do half of 18 years on that case.

23 Q. Does your plea agreement say you only have
24 to do half of the time that they sentenced you for
25 sodomizing this John Hardy?

1 A. No -- yes, it does.

2 Q. It does?

3 A. Yes.

4 Q. Does the judgment and sentence say that
5 you are to receive and do only 50 percent of the
6 time that you were sentenced to do?

7 A. Yes.

8 Q. It does?

9 A. Yes.

10 Q. You're sure of that?

11 A. It's a 50 percent crime, yes.

12 Q. Now, I didn't ask you if it was a 50
13 percent crime. Listen to my question.

14 A. I don't know if it does, but we can go
15 over the S and J if you want. But I don't know if
16 it does. But I know the sentencing guidelines is a
17 50 percent crime, yes.

18 Q. All right. What I'm asking you is whether
19 the Court said, at the time that you were sentenced,
20 "You're only to do 50 percent of the 18 years you
21 were sentenced for torturing that young man?"

22 A. Well, he's older than me. But, yeah, it
23 does say that.

24 Q. Okay. You're right. And also, it says
25 the -- is that an 856?

1 A. That's 85 percent.

2 Q. 85 percent. And what do you understand to
3 be the percentage of sentences you have to serve in
4 the federal system?

5 A. I do not know.

6 Q. Is it 85 percent?

7 A. I couldn't say for sure.

8 Q. Well, what does the 85 percent refer to?

9 A. That 85 percent is referring to my second
10 J and S, where I assaulted the four officers in
11 Santa Rosa.

12 Q. Is that the assault that resulted in the
13 loss of one of the officer's eyes?

14 A. That's correct.

15 Q. That's the assault that resulted in one of
16 the officers losing his spleen?

17 A. Yes.

18 Q. A vital organ, right?

19 A. I do not know.

20 Q. Well, you -- and that's an 85 percent,
21 right?

22 A. Yes, that's an 85 percent plea agreement.

23 Q. And would it be fair to say that you want
24 any federal time that you are sentenced to in this
25 case to run concurrent with all of those cases?

1 A. With my -- this was the last remainder.
2 Let's see how much time I have left. It says --
3 something to NMCI. Four more years to my state
4 convictions.

5 Q. Okay.

6 A. That's what it was.

7 Q. But you want it to run concurrent?

8 A. With my federal.

9 Q. So while you're sitting in the federal
10 joint, you can knock off some of this state crime?

11 A. That's correct.

12 Q. Those are the things you want for coming
13 in here and testifying, correct?

14 A. Those are the things that are in my plea
15 agreement, yes, that state time will run concurrent.

16 Q. But that's not all you want. You want a
17 5K, right?

18 A. I didn't know what a 5K was. They gave me
19 that, and I guess that's up to their discretion.

20 Q. Well, as you sit there today, do you know
21 what a 5K refers to?

22 A. I do now, yes.

23 Q. You know that the federal system is guided
24 by what's called the sentencing guidelines?

25 A. I've heard of it.

1 Q. Do you have any kind of legal materials in
2 your possession or that are available to you?

3 A. I did.

4 Q. When was it "did"? When was that?

5 A. I had some before the feds came and picked
6 it up.

7 Q. I'm sorry? I didn't --

8 A. The feds came and picked up every single
9 piece of paper out of my house.

10 Q. And do you have any kind of ability to
11 secure any legal documents or legal papers in your
12 present situation?

13 A. I guess I could if I wanted to.

14 Q. If you asked. When you sit down with --
15 you call her "Maria," right?

16 A. Follow her.

17 Q. When you sit down with Maria, you could
18 ask any question you wanted about how the federal
19 system works?

20 A. That's correct.

21 Q. You could ask her, "What is a 5K?"
22 Correct?

23 A. Yes.

24 Q. And, in fact, amongst the cooperators,
25 they all know what a 5K is, don't you think?

1 A. I recently learned all the details of the
2 5K. But yes.

3 Q. And the details, as you call them, of the
4 5K, is that the Government can request that you
5 receive something less than the life sentence that
6 is mandated under the statutes for the crimes that
7 you've committed?

8 A. That's correct.

9 Q. And so if you had a 5K, you might get back
10 out on the streets?

11 A. I guess that's a possibility, yes.

12 Q. And you might not have to use your own
13 identity when you do that?

14 A. That's correct.

15 Q. Now, you haven't been charged for bringing
16 those weapons into the court, have you? Have a
17 drink. You don't have to hurry. Go ahead.

18 A. No, I was not.

19 Q. So that's a significant federal crime,
20 isn't it?

21 A. I think that's part of the debrief, that
22 you admit to the crimes you've committed and take
23 responsibility, I guess. But yeah.

24 Q. You're admitting to them here in open
25 court, aren't you?

1 A. Yes, sir. I'm telling the truth.

2 Q. That's a totally different interest in
3 terms of what you're doing, correct?

4 A. Yes.

5 Q. And when you brought those shanks into the
6 court, hidden -- I think you referred to it as
7 keistered, right?

8 A. That's correct.

9 Q. And you don't put hot sauce or lotion up
10 your rectum; you put weapons up there? Is that
11 correct?

12 A. That's correct.

13 Q. And so the weapons that you put there, you
14 could have used them to stab anybody you wanted to,
15 couldn't you?

16 A. If I wanted to, yes.

17 Q. You could stab court staff?

18 A. I don't know for what reason, but yes.

19 Q. You know, I hope we don't have to rely on
20 your reason. But you could stab the Marshal
21 Service?

22 A. That's correct.

23 Q. The attorneys?

24 A. That's correct.

25 Q. Anybody you had decided disrespected you?

1 A. That's correct.

2 Q. And you, when you attacked the guard and
3 you tore his eyeball out, that was over disrespect,
4 right?

5 A. Yes.

6 Q. That's part of the convict code?

7 A. That's part of the convict code, yes.

8 Q. That if someone disrespects you, you have
9 to respond?

10 A. You act on the violence, yes, sir.

11 Q. Because if you don't, everyone is going to
12 disrespect you?

13 A. That's correct.

14 Q. Now, you haven't been charged with the
15 Esparanza (sic) ordeal or assault, have you?

16 A. Esparanza?

17 Q. Esparza?

18 A. Yes. No, I was never charged.

19 Q. Okay.

20 A. In the state level or the federal.

21 Q. That's the one where we saw you basically
22 viciously attacking this man who is handcuffed?

23 A. Yes, sir.

24 Q. You would agree that's a very cowardly
25 act, wouldn't you?

1 A. No. It's common in that facility.

2 Q. Would you believe that it's a cowardly
3 act?

4 A. No, I would not.

5 Q. Okay. So you were acting, infused with
6 bravery, as you attacked this handcuffed man,
7 correct?

8 A. Yes, sir.

9 Q. Hidden behind a wall. You saw the
10 correctional officer run away, right?

11 A. Yes, sir.

12 Q. He saw the savagery that you were
13 inflicting upon this handcuffed individual, didn't
14 he?

15 A. No.

16 Q. He didn't?

17 A. No. He took off running before the
18 stabbing occurred.

19 Q. Did you continue to stab that individual
20 over and over again?

21 A. Yes, I did.

22 Q. And I think you also said at one point in
23 time you were trying to stab him in his face and in
24 his eyes.

25 A. I did.

1 Q. And then, I guess just -- I don't know --
2 out of anger, you bit this man's ear off?

3 A. That was before I stabbed him in the face
4 and the eyes, yes. Because he didn't want to let
5 go.

6 Q. Did you eat the ear, or did you spit it
7 out?

8 A. I don't remember.

9 THE COURT: Mr. Sindel?

10 Q. And that's not the only time you've bitten
11 some person's ear off, is it?

12 A. No, sir.

13 Q. You did that in the attack that occurred
14 on the recreation yard?

15 A. Yes, sir.

16 THE COURT: Mr. Sindel, would this be a
17 good time for us to take our morning break?

18 MR. SINDEL: As long as it doesn't include
19 lunch, that would be fine.

20 THE COURT: Let's talk a little bit about
21 lunch. If we take it now, do y'all want to come
22 back in about 15 minutes and do like we did
23 yesterday? Is that what you prefer? How many
24 support that or want that? Okay, looks like most
25 people. Does that work for the attorneys and the

1 parties? Okay.

2 Let's take about a 15-minute break, then
3 we'll come back in and work through the lunch hour,
4 and then take a late lunch. All right. We'll be in
5 recess for about 15 minutes. All rise.

6 (The jury left the courtroom.)

7 THE COURT: All right. Ron Travers, the
8 deputy probation officer, is going to have documents
9 to me this afternoon. I think what this note means
10 is that the files for the cooperators that are
11 somewhere in between are going to be given to me, so
12 I'll -- unless somebody thinks otherwise, I'll start
13 just reviewing those, to see if there is anything
14 that I think would be Brady material, even though it
15 may not technically be Brady. But I'll use my Brady
16 eyes, Rule 16 eyes, and Giglio eyes, to see if there
17 is anything useful there for the defendants, and
18 we'll proceed from there.

19 MS. TORRACO: Your Honor, before we break,
20 can I make just a very brief --

21 THE COURT: Let's do it after the break.
22 All right?

23 MS. TORRACO: Thank you.

24 THE COURT: We'll be in recess for about
25 15 minutes.

1 (The Court stood in recess.)

2 THE COURT: All right. I think we now
3 have an attorney for each defendant.

4 Briefly, Ms. Torracco, what do you have?

5 MS. TORRACO: Thank you, Your Honor. I
6 want to just object to the line of questioning
7 that's coming from Mr. Sindel. We have conflicting
8 defenses, and we object to the ongoing details that
9 are coming out through the witness. Thank you.

10 THE COURT: What's the basis for the
11 objection?

12 MS. TORRACO: Well, it's certainly not
13 relevant to Andrew Gallegos' defense, all of the
14 details like the gouging out of the eyes and the
15 details of the stabbing.

16 THE COURT: So it's relevancy?

17 MS. TORRACO: Thank you. It's relevancy.

18 THE COURT: All right.

19 All rise.

20 (The jury entered the courtroom.)

21 THE COURT: All right. Mr. Rodriguez,
22 I'll remind you that you're still under oath. Mr.
23 Sindel, if you wish to continue your
24 cross-examination of Mr. Rodriguez, you may do so at
25 this time.

1 MR. SINDEL: Thank you, Your Honor.

2 THE COURT: Mr. Sindel.

3 BY MR. SINDEL:

4 Q. We had the distinct misfortune to view
5 your attack on Mr. Esparza yesterday. There are
6 also videos of your attack on Mr. Molina; is that
7 correct?

8 A. I didn't attack him, no.

9 Q. There also are videos in the attack that
10 you orchestrated on Mr. Molina, aren't there?

11 A. Yes.

12 Q. And there is an attack on Mr. Sosoya? Is
13 that how you pronounce his name?

14 A. Sosoya. You're correct.

15 Q. There is a video of that, isn't there?

16 A. I do not know. I've never seen it.

17 Q. You've never seen that one?

18 A. No, sir.

19 Q. The Government has never shown you, you
20 attacking that man on the recreation yard?

21 A. No, sir.

22 MS. ARMIJO: Objection, Your Honor;
23 stating facts not in evidence. And there is no
24 video on Sosoya.

25 THE COURT: Well, he can ask the question.

1 Overruled.

2 BY MR. SINDEL:

3 Q. The situation that you reviewed and viewed
4 yesterday, you haven't seen the video of the attack
5 on Molina, correct?

6 A. Yes, I've seen the attack on Molina.

7 Q. You've seen that one, correct?

8 A. Yes, sir.

9 Q. So we can spare the jury the anguish, but
10 that was a serious --

11 MS. ARMIJO: Objection, Your Honor, to the
12 commentary.

13 THE COURT: Don't comment on the evidence.
14 We'll leave that for closings. Sustained.

15 BY MR. SINDEL:

16 Q. It has, to some extent, the same level of
17 violence and barbarity as the video we were forced
18 to view yesterday, right?

19 MS. ARMIJO: Objection, Your Honor, to the
20 comment.

21 THE COURT: I think this question is all
22 right. Overruled.

23 A. I don't know.

24 Q. Do you have any estimate of how many
25 people's body parts you have violated or eaten or

1 destroyed?

2 A. Well --

3 Q. There's a spleen?

4 A. I can name them for you.

5 Q. I'll name them for you; you tell me if I'm
6 right.

7 A. That's correct.

8 Q. A spleen.

9 Eye?

10 A. Correct.

11 Q. Two ears?

12 A. Correct.

13 Q. An anus?

14 A. Correct. And two other pairs of eyes.

15 Q. Excuse me?

16 A. And you missed the other eyes, from
17 Esparza, yes.

18 Q. His eyes. And the wounds that are
19 inflicted whenever you stab someone, right?

20 A. That's correct.

21 Q. Now, you had said that before the attack
22 on Sosoya, you had spent some time trying to make
23 him feel comfortable?

24 A. Yes.

25 Q. Is that called rocking the cradle?

1 A. No.

2 Q. Is that a situation where you want to make
3 someone feel safe around you?

4 A. That's what I explained, yes. Make him
5 feel comfortable.

6 Q. Make them feel comfortable like you're a
7 friend, like you're on their side, that kind of
8 thing?

9 A. That's correct.

10 Q. You've got to look them eyeball to eyeball
11 and lie to them to, don't you?

12 A. No.

13 Q. Oh, you're not lying when you say, "I'm
14 your friend"?

15 A. Not looking them in the eyeball, but --

16 Q. Well, what are you -- are you looking on
17 the ground when you talk to these guys?

18 A. No, we're on lockdown. Just tell them,
19 "Hey, you're all right. Don't worry about it."

20 Q. So you're trying to convey the impression,
21 when you see them or when you're around them, that
22 you're honest?

23 A. That's correct.

24 Q. That you're truthful?

25 A. That's correct.

1 Q. And that you're not planning to murder
2 them?

3 A. That's correct.

4 Q. And all of those things are lies, aren't
5 they?

6 A. They're lies, yes.

7 Q. And you have to carry that attitude out if
8 you're going to perform what you believe was your
9 purpose or function, to attack people?

10 A. You don't have to, but it --

11 Q. It helps?

12 A. It helps, yes.

13 Q. The better liar you are, the better you're
14 able to accomplish those tasks?

15 A. No.

16 Q. Well, don't you believe that if you're
17 able to make someone feel comfortable, they might
18 get closer to you?

19 A. No. Well, the Sosoya case, it wasn't a --
20 I guess that's --

21 Q. Let their guard down?

22 A. Yeah, that could be possible. Yes.

23 Q. Let their guard down?

24 A. Right.

25 Q. Playing basketball, or having a good time,

1 right?

2 A. That's correct.

3 Q. All the time, you're thinking: I'm just
4 waiting for a moment when he's tired and I can
5 attack him?

6 A. Yes.

7 Q. And remove some part of his body?

8 A. That's the green light. Yes, sir.

9 Q. Have you, to this point, ever been charged
10 in connection with the offense against Mr. Esparza?

11 A. No.

12 Q. Do you know what a statute of limitation
13 is?

14 A. Yes, I do.

15 Q. And do you know what the statute of
16 limitation is for attempted murder in the State of
17 New Mexico?

18 A. I do not.

19 Q. If it's 15 years, are you still subject to
20 possible prosecution for that crime?

21 A. If it's 15 years?

22 Q. Yes.

23 A. I believe so.

24 Q. All right. But you haven't, as of yet,
25 been prosecuted?

1 A. No.

2 Q. And you certainly don't want to be, do
3 you?

4 A. Well, it's not in my control, but --

5 Q. You don't want to be, do you?

6 A. Well, no one wants to be.

7 Q. Fine. So the answer is --

8 A. No.

9 Q. All right. And if the federal government
10 can help you work your way through that labyrinth --
11 you know what I mean by that, right?

12 A. No.

13 Q. That maze.

14 A. Okay.

15 Q. You'll certainly accept that help, won't
16 you?

17 A. If they told me they would help me with
18 that?

19 Q. Yeah.

20 A. I was never charged with it, so they
21 wouldn't help me with that.

22 Q. Well, if they were able to say, "We can
23 talk to the prosecuting authorities, and perhaps we
24 can make sure that you aren't charged, so you don't
25 face a possible 15-year consecutive sentence," you

1 would accept that, wouldn't you?

2 A. If that's something they want to do, I
3 wouldn't object to it.

4 Q. Well, you would not object to it; you'd
5 relish it?

6 A. Say, "Thank you."

7 Q. Yes. Right. "Thank you very much."

8 A. Yes, sir.

9 Q. "You know, I did your bidding. Please do
10 some of mine."

11 A. I haven't done anybody's bidding.

12 Q. Haven't they called you as a witness?

13 A. That's correct, but I --

14 Q. Haven't they asked you to testify?

15 A. That's my choice.

16 Q. Haven't they asked you to testify?

17 A. They never asked me. That's an
18 obligation, I guess, to the 5K.

19 Q. It's the obligation in order to get the
20 5K. And are you telling me that they haven't told
21 you that you could possibly get a 5K if you testify?

22 A. I think it's a one sentencing phase
23 reduction that's in the plea.

24 Q. I don't believe that's the situation. A
25 5K allows them to make a recommendation to the Court

1 as to sentencing; correct?

2 A. I believe so, yes.

3 Q. And that in the -- at least in some of the
4 crimes you're charged with, it's life; it's never
5 leaving the penitentiary?

6 A. That's correct, sir.

7 Q. You don't want that, do you?

8 A. No.

9 Q. Okay. You don't, right?

10 A. No.

11 Q. I mean, you wouldn't be okay if they said,
12 "You know what? We just decided not to do it. Go
13 ahead and just spend the rest of your days in
14 solitary confinement behind bars"?

15 A. Why would I be in solitary confinement?

16 Q. Well, I think you could probably earn it.
17 But you'd be okay with spending your time
18 in the penitentiary for the rest of your life?

19 A. Without gang activity, I guess I would
20 have to be okay with it, yeah. As long as I
21 wouldn't be involved in gang activity, then yeah.

22 Q. But your goal is to convince them that
23 they should file a 5K?

24 A. That they shouldn't?

25 Q. They should.

1 A. I have no convincing there. That's up to
2 them.

3 Q. You have asked for them to try to get you
4 a certain deal in order for you to cooperate, right?
5 I just showed it to you.

6 A. I wasn't -- that never came up in
7 conversation. That was something that I wrote on
8 there. And it's never been a topic. I forgot I
9 even wrote that.

10 Q. Well, did you give it to them so they
11 could attach it to the report that they prepared in
12 connection with the meeting you had on November 1st?

13 A. That's correct.

14 Q. So whether you asked for it or not, it
15 certainly was in there in your handwriting?

16 A. Yes, sir.

17 Q. Those were the things you wanted, right?

18 A. I think those are things that are eligible
19 for witnesses. I think so. And that's only -- I
20 guess I've got to ask about it, right?

21 Q. I guess you do have to ask. You want the
22 best deal you can get?

23 A. I'm not concerned about the best deal I
24 can get. I'm concerned with getting out of gang
25 life.

1 Q. Well, then if you're not concerned, why is
2 it that you put on there that you'd like your state
3 charges to run concurrent with any federal charges?

4 A. Because if I do get a deal, then I'm going
5 to finish my federal time and come back in the state
6 custody and do the remainder of my time. I'm not
7 even sure I owe four years.

8 Q. What I'm asking you, sir, is: Do you want
9 to get a cut in your time?

10 A. I would appreciate it, yes.

11 Q. Is that part of what your goal is?

12 A. No.

13 Q. So you have -- so if everyone said you're
14 going to go and spend life in prison, that's fine
15 with you?

16 A. That's something I would have to face, you
17 know. That's something, if that comes upon you, you
18 have to face it. I committed the crimes. I took
19 responsibility for them. And if that's what is out
20 there, then you have to do it.

21 Q. When you took responsibility -- when you
22 stood in front of or sat in front of this jury and
23 talked about what you did to John Hardy in the Grant
24 County jail, you didn't take responsibility for
25 that, did you?

1 A. I didn't commit that crime. I was
2 involved in that crime.

3 Q. Were you charged with committing that
4 crime?

5 A. Aiding and abetting, yes.

6 Q. Okay. All right. That's good. What do
7 you understand aiding and abetting to be?

8 A. Aiding and abetting is when you commit a
9 crime that leads to another crime, that you're
10 guilty of that crime. I was involved in a crime on
11 John Hardy that evolved into him getting sodomized
12 with the hot sauce bottle and lotion bottle. And
13 because of my acts, that took place. So that's
14 aiding and abetting.

15 If I commit a crime with someone and they
16 kill someone, I was in commission of that crime.
17 I'm eligible for -- that's my responsibility.

18 MR. SINDEL: One second, Your Honor?

19 THE COURT: Certainly.

20 MR. SINDEL: Your Honor, I'm referring to
21 Exhibit Number 607-004. May I approach, Your Honor?

22 THE COURT: Yes. Did you just give an
23 exhibit number or a Bates number?

24 MR. SINDEL: I gave an exhibit number,
25 607. I think it's page 2. It is the judgment and

1 sentence order of commitment on the offense
2 involving Mr. John Hardy at the Grant County jail.

3 BY MR. SINDEL:

4 Q. Did you recognize those documents as being
5 the documents that were produced by the state court
6 as a result of your torture of that John Hardy?

7 A. Not this one. These pages, yes.

8 Q. Which one are you looking at? What's the
9 title on the page that you said you don't recognize?

10 A. I recognize it, but it's not a part of the
11 case against John Hardy. 8786 DeLeon and continued.

12 Q. Have you looked at those documents?

13 A. That's correct.

14 Q. Have you seen them before?

15 A. Yes.

16 Q. Now, you said when you entered into and
17 walked into the courtroom, you pled guilty to aiding
18 and abetting?

19 A. No contest to the crime of criminal sexual
20 penetration.

21 Q. Because you had only aided and abetted?

22 A. Because my crime led to that crime.

23 Q. And as I understand your testimony, what
24 you admitted to and what you were charged with was
25 aiding and abetting the other sadists who were

1 involved in this event?

2 A. I aided and abetted them, yes.

3 Q. And that's what you were charged with?

4 A. I was charged with the actual crime, but
5 that thing is -- what you just asked me was to
6 explain aiding and abetting, and what I'm telling
7 you is what I explained, that you're charged with
8 that crime because your crime led to the commission
9 of that crime. That's aiding and abetting.

10 Q. Is there anything in the charges that you
11 had entered into that said that you were aiding and
12 abetting?

13 A. I think it says who sodomizes him, so --

14 Q. All right.

15 A. I'm not sure if it does, but --

16 Q. Were you the defendant in that case?

17 A. I was one of the defendants, yes.

18 Q. Were you ever the defendant in the case of
19 the documents I showed you?

20 A. Yes.

21 Q. Does it say in those documents: On or
22 about August 11, 2003, in Grant County, New Mexico,
23 the defendant did intentionally and unlawfully, by
24 the use of force or coercion or threats of force or
25 coercion, cause John Hardy to be penetrated to any

1 extent with a hot sauce bottle in his anal opening?

2 A. That's what it says, yes.

3 Q. And that's what you pled no contest to?

4 A. That's correct.

5 Q. So you weren't charged with aiding and
6 abetting, were you?

7 A. You just asked me to explain aiding and
8 abetting. Yes. I was charged with the actual
9 crime, yes.

10 Q. You were charged with the crime?

11 A. That's correct.

12 Q. You weren't charged with someone who aided
13 and abetted that crime?

14 A. That's correct.

15 Q. And we don't know, other than what you
16 claim happened, what you did to that young man's
17 anus, do we?

18 A. Well, you have habeases that I took
19 responsibility for the crimes I committed against
20 John Hardy from 2012, I think. I confessed to the
21 crimes I committed against John Hardy. And my
22 co-defendant confessed. He was going to testify on
23 my behalf.

24 Q. I'm not asking what your co-defendant did.
25 I'm asking you: Is what you said in this courtroom

1 right?

2 A. That's correct.

3 Q. But the documents that charge you doesn't
4 mention a single other person, does it?

5 A. Well, you asked me what it is, but --

6 Q. Does it mention a single other person
7 besides you?

8 A. No. I'm thinking it mentions Jason
9 Lucero.

10 Q. You've answered the question, haven't you?

11 A. No.

12 Q. Is there another charge in which you
13 penetrated this man's anus with an object?

14 A. I'm telling you, I didn't do that. I was
15 there when it happened, and I pled guilty to it.

16 Q. Did you say to the Court, "I have no
17 reason or no contest to the charges"?

18 A. That's correct.

19 Q. And that was criminal penetration, as
20 well?

21 A. That's correct.

22 Q. And it doesn't name anyone else in the
23 charging document?

24 A. I guess, unfortunately, not.

25 Q. Well, you had a lawyer. You could have

1 made a case for it through your lawyer, correct?

2 A. I don't know.

3 Q. But when you stood up there and you said,
4 "Look, I'm not going to contest the charges," you
5 understood the charges were that you did that act?

6 A. No.

7 Q. Well, didn't there enter into an agreement
8 and a judgment and commitment about having committed
9 those crimes?

10 A. Yes.

11 Q. And when you know it's sexual penetration,
12 right, it's a sex crime?

13 A. That's correct.

14 Q. That wasn't all the criminal acts you
15 committed against that young man, were there?

16 A. No, I confessed to the ones I did in my
17 habeas. But, no, I committed other acts.

18 Q. You beat him with your fists and your
19 feet?

20 A. That's correct.

21 Q. And you also, at one point in time, forced
22 him to snort Ajax cleanser --

23 A. That's correct.

24 Q. -- into his nose? Did you have any idea,
25 when you were doing that, what you were doing to

1 that person?

2 A. Yes, I did.

3 Q. Did you have any idea what kind of effect
4 it would have on him, physically?

5 A. Obviously I didn't care, did I?

6 Q. You could have killed him, as far as you
7 knew, right?

8 A. Correct.

9 Q. And when you squirted -- or when hot sauce
10 was squirted up his anus, you don't know what kind
11 of effect it could have had on him, right?

12 A. No, I don't.

13 Q. But the purpose, you said, was because you
14 found out he had money on the books?

15 A. No. It escalated to that.

16 Q. It didn't start out that way; it just got
17 that way because it was financially beneficial?

18 A. No.

19 Q. You weren't going to try to get money from
20 the books?

21 A. Yes, but --

22 Q. Yes?

23 A. Yes.

24 Q. The answer is "Yes," isn't it?

25 A. Correct.

1 Q. And that the same offenses, those were the
2 offenses that involved the battery upon a peace
3 officer; and escape from jail, and I think you said
4 twice?

5 A. Twice. Yes, sir.

6 Q. And did the sexual penetration also
7 include a lotion bottle?

8 A. One of the counts, yes.

9 Q. Did you at any time, when you were working
10 with these other sadists, beating this guy and
11 plunging instruments and things into his anus, did
12 you ever ask him who his family was?

13 A. That's correct.

14 Q. Where they lived?

15 A. Yes.

16 Q. Was that part of the threat that you could
17 hold over his head?

18 A. That's correct.

19 Q. So that you actually not only said, "You
20 know, we may just kill you here; we may kill your
21 children"?

22 A. No, I did not say that.

23 Q. Well, you asked him where they lived,
24 right?

25 A. Yes, sir.

1 Q. The message was clear, wasn't it?

2 A. It's clear.

3 Q. What were the number of years that you
4 could have faced with all the charges that you had
5 from the Grant County Detention Center?

6 A. I think a total at the time of
7 indictments, all the cases, I think it was a total
8 of 159 years.

9 Q. And you had gone into the Grant County
10 Detention Facility because you had committed another
11 crime on the streets, right?

12 A. Yes.

13 Q. What was that?

14 A. I think I had aggravated battery with a
15 deadly weapon.

16 Q. I'm sorry? What?

17 A. Aggravated battery with a deadly weapon.

18 Q. So the litany of the charges that you
19 managed to accumulate while in the Grant County jail
20 could total 159 years, and then they dropped a
21 number, right?

22 A. I went to the preliminary hearing, and
23 they dropped 20 of the 27 counts in one of the
24 indictments, and it went down to 59 years.

25 Q. So you were facing 59 years at that time?

1 A. In the district court, yes, sir.

2 Q. I'd like to talk to you briefly about the
3 times that you went in to the Government and gave
4 them information in terms of debriefing. All right?

5 A. Yes, sir.

6 Q. Have a drink.

7 A. I did.

8 Q. I think you said the first time was
9 October 24, 2017?

10 A. The time I left?

11 Q. The time that you -- was that when you
12 went into the court to plead guilty?

13 A. Yes, sir. No, no. That was the time that
14 I went preparing for trial.

15 Q. You were preparing for trial?

16 A. Sosoya. So it was a -- I think it was a
17 motions hearing, getting ready to set -- I guess to
18 see if the trial was going to go forward or not.

19 Q. And in terms of the trial on the Molina
20 murder, pretty much everybody was gone out of it, I
21 think you said, but you?

22 A. No. That was on the Sosoya case.

23 Q. Oh, Sosoya. I'm sorry.

24 A. Yeah.

25 Q. And you were sort of the last man on the

1 totem pole, right?

2 A. On the Sosoya, case?

3 Q. Yes.

4 A. Yes, sir.

5 Q. And in terms of the Molina case, there
6 were a number of people who had turned and entered
7 the prosecution's team, correct?

8 A. Yes.

9 Q. And you understand that a 5K is available
10 to you if you provide what they call substantial
11 assistance?

12 A. Yes.

13 Q. So you have to be in a position to try to
14 assist them in a way that, under the guidelines, has
15 to be considered substantial?

16 A. Is that what it says in the 5K?

17 Q. Yes.

18 A. Then that's part of testifying, I guess.

19 Q. Well, just testifying isn't enough if
20 you're not providing substantial assistance, right?

21 A. Right.

22 Q. The other defendants on the Molina count,
23 they had already had a team of people, cooperators,
24 working against them, right?

25 A. Yes.

1 Q. You weren't bringing anything new to the
2 table on that, were you?

3 A. Yes, I believe I was.

4 Q. Okay. Well, you believe that you could
5 provide a little tiny spec of information that
6 wasn't already available from the other individuals
7 who were cooperating?

8 A. No. I provided all the inner goings of
9 the conversations, and where the weapons came from,
10 and the paperwork, and how it worked.

11 Q. Did you also try to help them flip Dan
12 Sanchez?

13 A. I wrote Daniel Sanchez, a friend of mine,
14 a letter, telling him, "Fuck them guys. You should
15 come over."

16 Q. And you also talked to his brother,
17 Ronald?

18 A. At his request, yes.

19 Q. You met with him, with the Government,
20 correct?

21 A. That's correct.

22 Q. And the idea was, maybe if I can flip
23 somebody, that's a little more assistance, isn't it?

24 A. From -- at the beginning of it, it was --
25 I'm helping Ron. Ron comes to me and asks me to

1 speak to Bryan Acee for him.

2 Q. But I'm asking you: If you were able to
3 get someone to plead guilty, that is even more
4 assistance, right?

5 A. I don't know if it is, but I'm pretty sure
6 it would be, you know.

7 Q. You don't think it would be?

8 A. I said, I'm pretty sure it would be.

9 Q. Oh.

10 A. To get somebody like Daniel Sanchez to
11 leave, yes.

12 Q. So it would be another weight on your side
13 of the scales, right, when they're making an
14 assessment, when the Court has to make an
15 assessment, when they have to make an assessment?

16 A. I guess, yes.

17 Q. Okay. Now, I just jump around. I
18 apologize.

19 A. It's okay. I do the same thing. Same
20 thing.

21 Q. Yeah, I can see. I saw the video.

22 Anyhow, on October the 24th when you went
23 in there and talked to the FBI, was Ms. Armijo
24 there?

25 A. In the beginning?

1 Q. Yes.

2 A. October 24th?

3 Q. Or at any time during that meeting?

4 A. On October 24th? Yes, they were there.

5 Q. Okay. And Mr. Castellano?

6 A. I believe he was.

7 Q. Mr. Beck?

8 A. Yes, sir.

9 Q. Those people are all people you've become
10 familiar with?

11 A. Recently, yes.

12 Q. Well, October 24th, that's a bit of time
13 ago, isn't it?

14 A. Not when you're leaving something in your
15 life behind, no, it's not a long time.

16 Q. All right.

17 A. You know.

18 Q. Well, it is seven months ago?

19 A. Yes.

20 Q. All right. And so is that the first time
21 you sat down and talked with anybody from the FBI?

22 A. When I sat down and I spoke to them?

23 Q. Yes.

24 A. Or they spoke to me?

25 Q. Well, either way. You answered questions,

1 didn't you? You didn't sit there like a lump on a
2 log?

3 A. The first time I had evidence viewing with
4 them, I let them talk to me, and that was it. And I
5 went back.

6 Q. But I'm talking about on October 24th.

7 A. Oh, yes. Yeah, I spoke to them.

8 Q. And you had said to them, "Look, I'm going
9 to tell you the truth, tell you what happened"?

10 A. Not right away, no. But eventually, it
11 led to that, yes.

12 Q. Well, did you understand, did you know, or
13 do you realize that it's a lie, if you lie to a
14 federal agent, that's a crime?

15 A. I'm aware of that.

16 Q. It could be additional criminal penalties
17 that you could be subjected to?

18 A. That's correct.

19 Q. Did you lie in that particular interview?

20 A. I think I told them I wasn't an SNM
21 member.

22 Q. Did you tell them that you'd been shot
23 down for membership?

24 A. Based on my association and assumptions
25 with the beginning of the SNM and moving through the

1 ranks, I felt that I got shot down, yes.

2 Q. But was that a true statement when you
3 said you got shot down in 2005?

4 A. It was an educated assumption, I guess, on
5 my part.

6 Q. But you told this jury that in 2005, 2006,
7 you were inducted into the SNM Hall of Fame?

8 A. That's correct.

9 Q. So was that a lie when you told them that
10 you'd been shot down for membership?

11 A. No.

12 Q. Was it the truth?

13 A. It was the truth. Well, based on my
14 assumptions, because there was -- let me clarify
15 this for you.

16 Q. In 2017, that's 12 years after 2005?

17 A. You're not understanding the 302 there.

18 Q. What I'm not understanding is, were you --
19 at the time that you went in to see them, were you a
20 member of the SNM, as far as you were concerned?

21 A. Oh, yes, I was. Yes.

22 Q. Yes?

23 A. Yes.

24 Q. Did you tell them that at that time?

25 A. I did not.

1 Q. Did you tell them, in fact, that you had
2 been shot down for membership?

3 A. That's what I told them, yes.

4 Q. That's not true? Well, let me rephrase
5 it. Okay? I think I understand why we're not --

6 A. Yeah.

7 Q. You told them you might have been shot
8 down; but when you told them that, you also knew
9 that at that time you were a member, as far as you
10 were concerned, of the SNM?

11 A. No.

12 Q. You weren't a member in 2017?

13 A. Yes. I was a member in 2017, yes.

14 Q. So you didn't tell them that, right?

15 A. I told them about a situation when I first
16 arrived in 2005 and was living in V pod, that there
17 was rumors that the SNM was trying to recruit me,
18 but they never approached me with it. And it was my
19 educated assumption based on being an SNM member,
20 that something had to do with me being shot down.
21 And then Arturo Garcia later on recruited me.

22 It's two different situations, and you're
23 mixing them up as one.

24 Q. I don't know that I'm mixing them, but if
25 I am, I certainly apologize.

1 A. Yeah, you are.

2 Q. Well, you knew that you had to quote-
3 unquote "earn your bones," right?

4 A. That's correct.

5 Q. To get in, right?

6 A. That's correct.

7 Q. Did you tell them that at the meeting on
8 October 24, 2017, that you had never earned your
9 bones?

10 A. I can't recall.

11 MR. SINDEL: May I approach?

12 THE COURT: You may.

13 A. Yes, I told them that.

14 Q. They're on this thing, that you said with
15 Esparza, and the attack on Molina, and all these
16 other barbaric attacks you've referred to, you said
17 you'd never, as of October 24, 2017, earned your
18 bones?

19 A. That's correct. I told them that.

20 Q. Not true, is it?

21 A. I earned my bones. That's not true. I
22 lied to them.

23 Q. And did you tell them at that meeting
24 about the Esparza?

25 A. I did.

1 Q. And did you -- you told this jury that
2 that was an SNM-approved hit, right?

3 A. No.

4 Q. You told them that you did that on behalf
5 of the SNM?

6 A. Yes.

7 Q. Because if you're disrespected, you have
8 only one choice, and that's the murder or serious
9 assault, right?

10 A. That's correct.

11 Q. But did you tell the FBI, Ms. Armijo, Mr.
12 Beck, Mr. Castellano, at that time that that was the
13 purpose of that attack?

14 A. They knew it was, but I didn't tell them
15 that. It was a running joke that I wasn't an SNM
16 member, with a laugh, like, "I'm not SNM; you can't
17 prove it."

18 Q. Okay. Who was laughing the loudest there
19 at the time of this joke? Can you tell us that?

20 A. It was like, "Yeah, you're SNM. We know
21 you're SNM."

22 "No, I'm not," and I'd just have a grin on
23 my face. "I'm not SNM."

24 Q. So you said, "Well, I can stick to that
25 lie," right?

1 A. Once I knew I was coming under oath to
2 testify, I knew that I had to tell the truth. And
3 yes, I'm an SNM member.

4 Q. So you think that the oath is what changes
5 everything?

6 A. Well, I don't want to come in here and lie
7 about nothing.

8 Q. I'm asking you: Do you think it's the
9 oath, when you take an oath?

10 A. That changes something?

11 Q. Yes.

12 A. Yeah. I'm up here and being truthful. It
13 has to be truthful.

14 Q. In other words, if you take an oath, it's
15 important that you basically honor that commitment?

16 A. You get on the stand and you testify.
17 You've got to take an oath and be sworn in. And
18 you've got to honor that commitment, yes.

19 MR. SINDEL: May I approach, Your Honor?

20 THE COURT: You may.

21 Q. Ms. Armijo referred briefly to a state
22 case that was pending against you and Mr. Montoya
23 for the attack on Sosoya. Am I correct on that?

24 A. No, you're incorrect on that.

25 Q. Who was the attack?

1 A. It's the murder of --

2 Q. Molina?

3 A. Molina, yes.

4 Q. Okay. I'm sorry. There's too many.

5 Anyhow, I'm going to show you this document. Do you
6 recognize the handwriting?

7 A. Yes. It's mine.

8 Q. And is that a document that you prepared
9 in connection with that case?

10 A. With the Molina case?

11 Q. Yeah.

12 A. That's correct.

13 Q. In state court?

14 A. That's correct.

15 Q. What does it say there at the top of that
16 document?

17 A. I, Mario Rodriguez, 610549, am writing
18 this here statement on the behalf of Jerry Montoya.
19 I swear all that I state herein now is true to the
20 best of my knowledge. I am a co-defendant of Jerry
21 Montoya in CR-2014-00345, CR-2014-00310, as well as
22 an unknown case number. I have never made any
23 statement involving this case until now. I am
24 writing this on my own free will, and no one has
25 asked nor threatened me to do so.

1 Q. You swore in that statement that what you
2 were going to say in that statement was true, right?

3 A. Not on the stand, no.

4 Q. I didn't say that, did I?

5 A. Is it the same?

6 Q. Well, did you swear in that document that
7 you were going to tell the truth?

8 A. Yes.

9 Q. Did you?

10 A. I believe there is a lot of truth to it.
11 But at the end of the day, no.

12 Q. Well, did you say in that document that
13 Jerry Montoya never had a weapon?

14 A. That's correct.

15 Q. True or not?

16 A. Did I say that?

17 Q. No. Is that true?

18 A. That he had a weapon?

19 Q. That he did not have a weapon?

20 A. No, he had a weapon.

21 Q. Lie?

22 A. That's correct.

23 Q. That's one. Did you say that Jerry
24 Montoya never assaulted Molina?

25 A. Where at?

1 Q. I believe it's highlighted.

2 A. Any sort of weapon or assault, Javier
3 Molina. Yeah, that's correct.

4 Q. Yeah.

5 A. That's correct.

6 Q. A lie?

7 A. An inconsistency.

8 Q. A lie?

9 A. Yes.

10 Q. Did you say in there that you never saw
11 Molina shooting up drugs?

12 A. I never did. That day, I never did.

13 Q. Was the idea for him to shoot up drugs?

14 A. That's correct.

15 Q. To make the assault easier?

16 A. It happened before he shot up drugs, so
17 that's the truth.

18 Q. Did you say in there that Molina was
19 threatened by Montoya from the staircase?

20 A. Where at? Yeah, he did say that. He
21 said, "Don't come near me."

22 Q. Is that true?

23 A. That's true.

24 Q. Did you believe that Montoya acted because
25 he was threatened by Molina?

1 A. No.

2 Q. Okay. And did you say also in there that
3 Montoya never assaulted Molina?

4 A. Where at? Yes, that's correct.

5 Q. True?

6 A. That's true. Oh, that he never assaulted
7 him?

8 Q. He never assaulted him?

9 A. No, that's not true.

10 Q. So when you swear, your words, "I swear
11 that all I state herein now is true," doesn't mean
12 anything to you, does it?

13 A. Yes, it does.

14 Q. It didn't mean anything to you back then,
15 did it?

16 A. I was an SNM member then. It didn't.

17 Q. It didn't mean anything to you?

18 A. No, sir.

19 Q. And we have to try to judge when it is you
20 have decided to tell the truth, and when it is you
21 have decided to lie or exaggerate, don't we?

22 A. Lie or what?

23 Q. Lie or exaggerate.

24 A. Yes.

25 Q. Now, back to the October 24, 2017,

1 statements you were making to the FBI and the
2 members of the prosecution team. Did you tell them
3 that the Esparza assault was personal?

4 A. It was personal to me. Yes, I did.

5 Q. Did you tell them that the SNM didn't have
6 anything to do with it?

7 A. My membership of SNM. But SNM didn't have
8 their hand in saying, "Assault him." That's true.

9 Q. Did you tell them that many SNM members
10 believe this stabbing was the incident where
11 Rodriguez earned his bones?

12 A. Did I say that?

13 Q. Yeah.

14 A. Yeah, that's true.

15 Q. I'm not going to lie to you.

16 A. I don't know.

17 Q. Not yet.

18 A. Well, there you go.

19 Q. I imagine you're a pretty good judge of
20 the truth, aren't you?

21 A. I can see where you're going.

22 Q. Yeah. Well, have I thus far?

23 A. There is a little bit of --

24 Q. Have I lied to you thus far?

25 A. I don't know.

1 Q. Okay. But you said to them it wasn't SNM;
2 it was personal?

3 A. And that's the truth.

4 Q. Well, did you tell them it was not for the
5 SNM?

6 A. I did tell them that.

7 Q. Did you tell this jury it was for the SNM?

8 A. It was in furtherance of the SNM. I did
9 tell them that, yeah.

10 Q. So when you were talking to the FBI about
11 it, you basically made sure to distance this brutal
12 assault from the SNM, right?

13 A. It's both true and -- both situations are
14 true. I didn't attach SNM to it, you're correct.

15 Q. So the truth is kind of a vapor cloud that
16 you can adjust when you want it?

17 A. I think lawyers do it all the time.

18 Q. I didn't ask you that, did I?

19 A. It's not a vapor. It's that I told them
20 the truth and excluded the fact that I was an SNM
21 member.

22 Q. You got on that witness stand and said the
23 truth, and nothing but the truth?

24 A. On this one?

25 Q. Yes.

1 A. That's correct.

2 Q. And when you went in and read that
3 Kastigar letter -- you know what I'm talking about,
4 right?

5 A. Yes.

6 Q. That's a letter that says, "Look, if you
7 tell us the truth, we won't prosecute you" -- "we,"
8 not "the state," but "we" -- won't prosecute you for
9 the crimes you admit?

10 A. That's correct, I think. I don't know.
11 Is that what it says?

12 Q. Well, you signed it.

13 A. Yeah, I know.

14 Q. And they said, "Read it."

15 A. I didn't read it. I'm embarrassed to say
16 I didn't read it.

17 Q. You can read and write?

18 A. Yes, I can read and write. But I just
19 signed. I said, "Okay, this is what I need. If I
20 speak to you, nothing be held against me." And I
21 signed it.

22 Q. Did they explain what a Kastigar letter
23 was?

24 A. To a certain extent, yes. I spoke to my
25 lawyer about it. And I just didn't care. I just

1 wanted out.

2 Q. So -- well, I mean --

3 A. Hard to understand, I know.

4 Q. I'm kind of curious. Because if you don't
5 care, why are you asking for witness protection?

6 A. Because that's part of the things that you
7 can have.

8 Q. So you do care about that, don't you?

9 A. I don't want to go to a prison where I'm
10 going to get killed.

11 Q. Well, you don't want to go out in the
12 streets and have people know who you are, do you?

13 A. If my life is in danger, no.

14 Q. There are other advantages to being -- you
15 know what I mean by WITSEC, right?

16 A. Right.

17 Q. It's called Witness Security, right?

18 A. That's correct.

19 Q. It's available for people who want to hide
20 their identities, their past?

21 A. For security reasons, yes, another reason.

22 Q. It's available for any number of reasons,
23 if someone wants to hide their past, right?

24 A. From what I understand, is that if the
25 risk to society outweighs the threat on your life,

1 that you're not obligated to have it.

2 Q. No one has said you're obligated to have
3 it.

4 A. Well --

5 Q. Not many people hope you get it. But the
6 point is: Do you think that that's something that
7 could be available to you?

8 A. Yes, I believe it is.

9 Q. Now, did you ever clarify to the SNM that
10 you had attacked Esparza as a result of a -- for
11 personal reasons, and not in any way to show your
12 willingness to respond to what you thought was
13 disrespect?

14 A. Did I explain that to the SNM? Is that
15 what --

16 Q. Yeah.

17 A. In which way?

18 Q. I mean, did you say, "Hey, guys, that
19 wasn't me earning my bones; I did that because he
20 personally disrespected me"?

21 A. Well, they knew it was behind money and
22 the Burquenos, upstart of the prison gang,
23 Burquenos. They knew what it was about.

24 Q. Did you ever tell the FBI that you never
25 clarified with them that this was for personal

1 reasons, and not because of the SNM?

2 A. Did I ever tell them -- say that again.

3 Q. The SNM members.

4 A. Never --

5 Q. "You may think this is for disrespect of
6 the SNM; but no, this guy owed me 900 bucks, and I
7 was going to -- and he laughed at me"?

8 A. Yeah. I don't think I told them that --
9 that I went to every carnal and told them, "Hey,
10 this is why I did it." That's not what you do. You
11 don't go around saying, "Hey" -- going over to every
12 carnal, telling them the reason why you did
13 something.

14 Q. Can you read aloud that particular
15 sentence that begins with your name?

16 A. "Rodriguez never clarified with the SNM
17 that the stabbing was for personal reasons and was
18 not earning his bones for the gang."

19 And that's what I told you.

20 Q. Did you continue, during the course of
21 that interview, to tell the FBI -- to lie to them
22 about whether or not you were an actual member of
23 the SNM?

24 A. I told you, I told them I wasn't an SNM
25 member.

1 Q. Throughout the interview?

2 A. What do you mean?

3 Q. Well, as the interview went on, sometimes,
4 you know, you go, "Well, I guess I'm reminded that
5 that wasn't exactly the whole truth."

6 Did you say to them at any time, "Look,
7 I've got to come clean to you. I'm actually an
8 inducted member in the SNM since 2005"?

9 A. Not until later on. But that interview,
10 no.

11 Q. Much later, right?

12 A. About maybe -- well, like you said, I
13 haven't been gone that long from the SNM.

14 Q. This was in October. Did you tell them,
15 when you met with them on November the 1st?

16 A. I don't believe I did.

17 Q. Did you tell them -- did you come clean to
18 them and tell them the whole truth on November the
19 14th?

20 A. I can't recall what date it was. To be
21 honest, I can't.

22 Q. Let's see. Do you remember if you told
23 them in November?

24 A. I do not remember.

25 Q. Do you remember if you told them, when you

1 met with Chris Cupit and Captain Sergio Sapien on
2 December 12th, that you were a member?

3 A. I know I did not tell them that then.

4 Q. On January 22nd, when you met with Maria
5 and the FBI, did you tell them then?

6 A. On one of the preps?

7 Q. That you were a member of the SNM?

8 A. I told Maria. The first time I admitted
9 to it, I told Maria.

10 Q. When was that?

11 A. I think it was the first prep I went to.

12 Q. We just went through the October 24th
13 first prep.

14 A. That's not a prep.

15 Q. Oh, you're talking about preparing for the
16 trial?

17 A. Right. The first time I ever met with
18 her, I came clean.

19 Q. Would that have been on March 23rd?

20 A. I do not know, sir.

21 Q. If I showed you the document that reflects
22 there was a meeting to prepare for the trial, would
23 that be March 23rd?

24 A. If you show it to me, and if it shows on
25 there, that's the date.

1 Q. What's the date on there?

2 A. March 23, 2018.

3 Q. And does it indicate there at the
4 bottom -- there is a highlighted section concerning
5 your admission that you were brought into the SNM?

6 A. Yes, sir.

7 Q. Is that -- as far as you recall, is that
8 the first time you told them the truth about that?

9 A. I think that's the first time, yes, sir.

10 Q. That's a long time lying, isn't it?

11 A. Lying, as far as how?

12 Q. Your membership in the SNM.

13 A. I've been denying it, yes. It was a
14 running joke. They knew I was SNM. And I knew they
15 knew.

16 Q. We don't know what they knew. We only
17 know what you told them.

18 A. I'm pretty sure they could testify to it.

19 Q. Did you tell them on November the 1st that
20 you had never been voted into the SNM?

21 A. We went through that. Yeah, I told them
22 that. The first time I told them was on the
23 document you showed me.

24 Q. So, in other words, you continued with
25 that particular deception for months?

1 A. Yes, sir.

2 Q. Knowing full well that it is a crime to
3 lie to the FBI or a federal agent?

4 A. I found that out in my prior testimony,
5 yes.

6 Q. And in terms of what you found out, you
7 know that the range of punishment on that can be up
8 to five years?

9 A. Now I do.

10 Q. And there's multiple times that you've
11 lied to federal agents during the course of these
12 interviews; isn't that correct?

13 A. No.

14 Q. Each interview?

15 A. Okay. If you're saying each time I denied
16 being SNM, okay, each time I lied.

17 Q. Each one is a lie?

18 A. Okay. Then you're correct.

19 Q. Did you at any time contact Mr. Sanchez
20 about possibly turning, going to the Government's
21 prosecution team?

22 A. Daniel Sanchez?

23 Q. Yes.

24 A. Yes. I wrote him a letter.

25 Q. To try to persuade him to do what you're

1 doing?

2 A. To get out of the SNM, yes.

3 Q. But also to cooperate?

4 A. That's correct.

5 Q. And get into WITSEC?

6 A. That's a possibility, yes.

7 Q. Now, you have testified here today about
8 your contacts with Mr. Gallegos, correct?

9 A. With --

10 Q. Joe Gallegos. I'm sorry. I think you
11 said you were out in the yard one day?

12 A. Oh, yes. Yes. I was thinking that you
13 were asking me with you.

14 Q. Well, we've never met before.

15 A. No, what I'm saying is, testimony between
16 you and I.

17 Q. Oh, I see. Okay.

18 A. Yeah. I was trying to think.

19 Q. Okay. So you had -- had you ever
20 communicated with him by letter?

21 A. No.

22 Q. Had you ever communicated with him by
23 conversation prior to this meeting with Dan Sanchez
24 that you've testified about?

25 A. Yes.

1 Q. And had you ever -- do you have any
2 contact with him when he was on the outside?

3 A. No.

4 Q. Had you ever met him before the
5 conversation you had with Mr. Sanchez?

6 A. No, I hadn't.

7 Q. Do you know whether Mr. Sanchez grew up
8 with him?

9 A. That's what Mr. Sanchez related to me,
10 yes.

11 Q. And was that basically -- I think you said
12 it was primarily an introduction by Dan Sanchez to
13 Mr. Gallegos, right?

14 A. At that conversation, yes.

15 Q. And you didn't tell us anything about a
16 conversation that Mr. Gallegos had with you, right?
17 It was just, "Hello. How are you? Nice to meet
18 you"?

19 A. That's it.

20 Q. Did you ever receive a care package from
21 him?

22 A. From Andrew Gallegos, yes.

23 Q. No, I'm talking about Joseph. I'm sorry.
24 That was my fault. From Joseph Gallegos?

25 A. Yeah.

1 Q. From Joe?

2 A. Yeah. He disbursed it between us.

3 Q. Who did?

4 A. It went from the Andrew Gallegos to Joe
5 Gallegos, and Joe Gallegos disbursed it between four
6 or five of us, about three or four of us.

7 Q. And did you indicate that in any of the
8 interviews that you have conducted with the U.S.
9 Attorney's Office or with the FBI?

10 A. I think I told them about the care
11 package, but I didn't tell them that it got
12 disbursed by Joe.

13 Q. So you left him out of that. Did you ever
14 receive any kites from him?

15 A. From who?

16 Q. Joe Gallegos. I'm sorry.

17 A. Through the mail? Through which form?

18 Q. Well, inmate mail?

19 A. Fishing line, fishing to one another. If
20 something was going on, there is a drug deal or
21 something, then --

22 Q. Did you ever receive any kites from Joe
23 Gallegos?

24 A. Yes.

25 Q. Did you ever save any of those?

1 A. No.

2 Q. And you haven't testified to any of those,
3 have you, to date, before right this second?

4 A. No.

5 Q. And when you were in the Grant County
6 jail, I think you said that you escaped -- what?
7 Twice?

8 A. That's correct.

9 Q. Once when you walked away from a work
10 detail. Where did you go?

11 A. From work detail?

12 Q. From the work detail, when you ran away.

13 A. I took off into the surrounding area of
14 the work detail area.

15 Q. Did you get anywhere farther than that?

16 A. The vehicles that were there to pick me
17 up, I began running towards them. And they had that
18 area already surrounded. I was already, I think,
19 missing for about five or six hours, I think.

20 Q. Did you ever try to leave the country on
21 one of these escape attempts?

22 A. No.

23 Q. Did you ever go to Mexico in connection
24 with an escape attempt?

25 A. No.

1 Q. The other time that you escaped, you said
2 that that was when you faked the guards out, to try
3 and convince them you'd swallowed a razor blade?

4 A. I did convince them.

5 Q. And you were good at lying about that,
6 weren't you?

7 A. No. I had a piece of metal in me.

8 Q. Well, you convinced them --

9 A. It was a razor blade, yes.

10 Q. Yeah, and you convinced them that you had
11 swallowed a razor blade, right?

12 A. The X-ray machine convinced them of that.

13 Q. And then you took off when you got an
14 opportunity?

15 A. I did.

16 Q. And that was all to avoid punishment or
17 prosecution for the offenses that you had committed
18 against John Hardy?

19 A. I think that's the purpose of escaping.

20 Q. And so that has always been one of your
21 primary goals, is to try to avoid punishment if you
22 could?

23 A. No.

24 Q. No?

25 A. No.

1 Q. Well, were you willing to plead guilty to
2 59 years in the John Hardy matter for the sadistic
3 behavior you --

4 A. I was going to go to trial. They offered
5 me a plea deal of 18 years.

6 Q. You could have gone to trial?

7 A. I could have, but they offered me 18
8 years.

9 Q. You could have said, "It wasn't me; it was
10 someone else"?

11 A. And I did, until they offered me 18 years.

12 Q. They offered you 18 years total, right?

13 A. Yeah.

14 Q. So if the deal is good enough, you'll walk
15 into court and lie, won't you?

16 A. No.

17 Q. Well, was that what happened then? Is
18 that what your testimony is, that the deal was so
19 good, you were going to take it to trial, and even
20 though you didn't do anything, you finally said you
21 did? You said no contest?

22 A. I said no contest because of the deal, and
23 I committed a crime. I was part of the crimes.

24 Q. Are you wearing a black box now?

25 A. A black box?

1 Q. Uh-huh.

2 A. As far as what?

3 Q. Your handcuffs?

4 A. The black box?

5 Q. Uh-huh.

6 A. Transport box?

7 Q. Yeah.

8 A. No.

9 Q. You do know what I'm talking about, right?

10 A. If it's a transport box, yes, I know what
11 you're talking about.

12 Q. Okay. And is it usually black in color?

13 A. Yes.

14 Q. And a transport box, it's there to further
15 restrict the movement of your hands?

16 A. On transport, yes.

17 Q. Make it harder to possibly escape?

18 A. Yes.

19 Q. Can you slip a transport box?

20 A. A transport box?

21 Q. Yes.

22 A. No.

23 Q. Have you ever tried to slip a transport
24 box?

25 A. I think at one point in time, when the

1 carnals were slipping their chains, I tried to slip
2 the chains. Not a transport box. You can't slip a
3 transport box.

4 Q. Can you the slip the chains?

5 A. I cannot.

6 Q. Have you ever slipped the chains?

7 A. I've never slipped the chains.

8 Q. How was it that you were going to reach
9 into your nether regions, pull out a knife, and stab
10 whoever you decided you wanted to?

11 A. Well, if Archie had kept his word on going
12 to trial, we were going to go to trial, I'd be just
13 like your defendants here in a suit, and I would
14 have went to the restroom, took out the weapon, and
15 --

16 Q. I'm talking about when you came to trial
17 in Federal Court.

18 A. Right.

19 Q. But you also took your knife into Federal
20 Court every time you came to court?

21 A. Well, yeah. I'm not going to leave it in
22 my cell. They go shake down our cells when we're
23 gone.

24 Q. And every time you came to court, you
25 weren't wearing a suit, right?

1 A. Right.

2 Q. You were dressed somewhat similar to what
3 you are now, right?

4 A. Yes.

5 Q. And were you able to slip the handcuffs in
6 order to secure access to this knife that you were
7 carrying around?

8 A. No. I would request officers to -- that I
9 need to use the restroom. They would remove one
10 handcuff, and then I could take it out.

11 Q. Then you would take it out, and you could
12 come and wreak havoc in the courtroom if you wanted
13 to?

14 A. If I wanted to, yes.

15 Q. Now, you had discussed things about --
16 there were some questions that were asked you about
17 payment. Have you received any kind of financial
18 payments from the Government since you have -- since
19 that October 24th meeting?

20 A. I think New Mexico, they gave me \$50 a
21 month.

22 Q. And have you ever sought money from any
23 other source besides family?

24 A. Sought money from any other source?

25 Q. Um-hum.

1 A. As far as what?

2 Q. Just have you ever written to people on
3 the outside, saying, you know, "I need money. I'm
4 an inmate. I'm locked up. Can you possibly get me
5 any money?"

6 A. Friends?

7 Q. Friends or strangers?

8 A. Yeah, I probably have.

9 Q. All right. Do you know what a website
10 Write to Inmates is?

11 A. Yeah.

12 Q. That's a website where you can put some
13 information about yourself on that website, and then
14 you could solicit letters from other individuals?

15 A. That's correct.

16 Q. And you can also, if you want to, try to
17 get a little money to help you get by?

18 A. Yes.

19 Q. And you've done that?

20 A. I believe I received mail from a website
21 that one of the homie's wife was doing, and I
22 probably -- I don't think I asked anyone for money.
23 I don't know. That's a long time ago.

24 Q. Well, it's back in 2015, right? You were
25 doing that?

1 A. Yes.

2 Q. Actively?

3 A. Yes.

4 Q. You had written a letter to a gentleman
5 named Hosie?

6 A. Hosie Jackson, yeah, that had written me.

7 Q. And at the time that you had written him,
8 you had written him at least two letters, right?

9 A. I think so.

10 Q. Okay. And when you were responding to his
11 letters, you were aware, were you not, that he was
12 gay?

13 A. Yeah. He was saying he was a homosexual,
14 yes.

15 Q. And you said in 2015, you were aware of
16 the SNM's rules and responses to individuals who
17 engage in gay activity, homosexual activity?

18 A. That's correct.

19 Q. And you didn't mention that in any way in
20 your letter to Mr. Jackson, did you?

21 A. That I was SNM?

22 Q. Or anything about the fact that you
23 belonged to a group that discriminated or hated
24 them?

25 A. No. No, I didn't tell him that.

1 Q. Do you recall, as you sit there today,
2 whether you ever asked that gentleman for money?

3 A. He was offering money. I told him, "Well,
4 go ahead and send it."

5 Q. Regardless of the sexual preference,
6 right?

7 A. Yeah. I don't discriminate against
8 people's choices in life.

9 Q. Well, I mean, was that -- you understand
10 at least that the SNM could take a look at your
11 sexual criminal penetration as a possible homosexual
12 act, right?

13 A. No. It was with a foreign object. It
14 wasn't sexual pleasure.

15 Q. Well, because you say it's a foreign
16 object, right?

17 A. I think you read it in discovery, in the
18 J and S, didn't you?

19 Q. We don't know exactly what occurred in
20 that room, do we?

21 A. Yeah, we know.

22 Q. Because we can trust you?

23 A. Yes, sir.

24 Q. Do you remember receiving a questionnaire
25 or going through a questionnaire with Special Agent

1 Acee?

2 A. Yes.

3 Q. And did you write down the answers, or did
4 he?

5 A. I think he wrote down the answers and
6 brought me the draft, and I amended them, I think,
7 where he got some of the stuff wrong.

8 Q. Okay.

9 MR. SINDEL: May I approach, Your Honor?

10 THE COURT: You may.

11 Q. Do you recognize this as the document you
12 referred to as the questionnaire?

13 A. I believe this is the document, yes.

14 Q. All right.

15 A. I didn't write this, though.

16 Q. Okay, I'm going to get to that. Can you
17 take a look through that, each page, one at a time,
18 and tell me if there is anyplace where you made any
19 changes, corrections, additions, or edits?

20 A. I don't think I've seen this one.

21 Q. That's page 1. There is more to it?

22 A. I think these might have been my
23 corrections, but not in my handwriting.

24 Q. Well, I'm not sure I understand the
25 process. Mr. Acee is asking you questions? Or did

1 you read the document and answer the questions? How
2 did that work?

3 A. I think he asks you a variety of
4 questions, and then you answer them. And then he
5 reads you a draft, and you go over it to see if it's
6 correct. And I think I wrote this stuff in, but
7 it's not my handwriting.

8 Q. So, I mean, I guess if you say you wrote
9 it in, I would assume it would be in your
10 handwriting, but you're saying it's not?

11 A. It's not my handwriting, no.

12 Q. You looked at the first two pages. Go
13 ahead and look at the rest of them.

14 A. I see that this is my corrections.

15 Q. Okay.

16 A. Because I mentioned these individuals.

17 Q. All right.

18 A. That's not my handwriting.

19 Q. Okay. Just to be fair, what happened was,
20 you may have made some corrections, and Acee may
21 have done the handwriting?

22 A. I don't know who did the handwriting, but
23 someone did the handwriting.

24 Q. All right. But you did the interview with
25 Mr. Acee, correct?

1 A. That's correct.

2 Q. The date on it?

3 A. 11/1/17.

4 Q. And do you remember being asked in that
5 questionnaire, "What year did you join the SNM?"

6 A. I don't think I admitted in that one,
7 right?

8 Q. What?

9 A. I don't think I admitted to being an SNM
10 member in that.

11 Q. I'm asking if you remember on that
12 questionnaire?

13 A. I did not.

14 Q. I think it would be a little bit fairer if
15 I put it in front of you.

16 A. Okay.

17 Q. Is that okay?

18 A. Okay. Go over it like that?

19 Q. Yeah, I think so.

20 A. You got copy of it?

21 Q. I don't. Do you have a copy machine with
22 you?

23 A. We'll share, man.

24 Q. So there on page 1, there are three
25 questions that are highlighted, right?

1 A. Yes.

2 Q. That's part of the questionnaire, right?

3 A. Yes.

4 Q. And in those questions, can you read --

5 A. I know what this is now. This is the
6 actual questionnaire, and then back here is maybe
7 the answers.

8 Q. Some of the answers are right there --

9 A. What it is -- no, the things I did to fix
10 it. So this is the questionnaire he gives you.
11 There are none of my answers here.

12 Q. Wait a minute. Let's just slow down. It
13 says:

14 "What is your name?"

15 A. Right.

16 Q. "Mario Rodriguez."

17 A. Right.

18 Q. "Blue," in quotation marks?

19 A. Right.

20 Q. Okay. It says:

21 "Who gave you that moniker or nickname?"

22 "Teacher in Springer, always looked sad."

23 A. That's correct.

24 Q. So that is the information you gave him,
25 right?

1 A. That's the information I gave him, yes.

2 Q. Are there any answers to the question:

3 "What year did you join the SNM?"

4 A. Not on this page, no.

5 Q. Is there any answers -- you'll go through
6 the whole thing, okay, just one at a time. Is there
7 any answers to the question:

8 "Who brought you into the SNM?"

9 A. On the questionnaire, no.

10 Q. And I think you've testified that there
11 was someone who brought you into the SNM, right?

12 A. Yes.

13 Q. But that's not answered there on the
14 questionnaire?

15 A. Not on the questionnaire, no.

16 Q. It says:

17 "Were you in a street gang prior to
18 joining the SNM? And if so, what street gang?"

19 That's also blank; is that right?

20 A. It's blank, yes.

21 Q. And there is no question after that?

22 A. There is no answer after that.

23 Q. I mean -- sorry. No answer. It's a long
24 day.

25 A. You're making it longer.

1 Q. That's my job.

2 Then on this second page, it says:

3 Answer 20. "What did you do to earn your
4 bones?"

5 That's also blank.

6 A. Yes. On the questionnaire, it's blank,
7 yes.

8 Q. Because at that point in time you were
9 saying, "I had never earned my bones"?

10 A. I think it will be blank on the
11 questionnaire as far as my responses to these
12 questions.

13 Q. All right. So November 1, 2017, you're
14 still denying that you had ever made your bones?

15 A. November 1st?

16 Q. November 1st.

17 A. 2011?

18 Q. 2017.

19 A. Oh, yeah. 2017. All right.

20 Q. I'm sorry. And it says:

21 "Who are the current SNM leaders?"

22 That's also blank; is that right?

23 A. Yes.

24 Q. You had talked today or yesterday about
25 the gang's reputation?

1 A. Correct.

2 Q. And that was a major influence factor in
3 terms of the decisions you were making?

4 A. The reputation of the SNM?

5 Q. Yes.

6 A. Yes.

7 Q. To uphold the SNM to the point of actually
8 exposing yourself to a life sentence?

9 A. Yes.

10 Q. Number 38. It says there:

11 "In some gangs, if one member does
12 something to compromise the gang's reputation, then
13 all the members suffer to some degree. Is that true
14 of the SNM?"

15 What's your answer there?

16 A. On the questionnaire, there is no answer.

17 Q. Question 61: "Who do you believe to be on
18 the SNM hit list presently?"

19 There is no answer there, is there?

20 A. No.

21 Q. Also, do you notice that heading "Drug
22 Trafficking"?

23 A. Where at?

24 Q. I'm sorry. Right there.

25 A. Yes.

1 Q. And does it indicate there towards the
2 bottom, there is handwritten in there, "Heroin
3 brought in through COs"?

4 A. Yes.

5 Q. Now, was it true?

6 A. Do you want to ask me if there is an
7 answer there?

8 Q. Yeah. Okay.

9 A. Yes. It says:

10 "Allegedly Arturo Garcia claimed cartel
11 connection."

12 Q. That's not the question I asked you,
13 though. I asked you about this here.

14 A. Okay. "Heroin back in the day through
15 COs."

16 Q. Okay. So I think that you had testified
17 Suboxone came in through the mail?

18 A. One of the ways it comes in, yes.

19 Q. Because it could be hidden in the mail?

20 A. That's correct.

21 Q. Legal mail?

22 A. Yes.

23 Q. A lot harder to hide heroin?

24 A. It's been done, but they caught on to how
25 it was being done, yes.

1 Q. Right. So in order to get heroin in,
2 which is the drug of choice among many of the people
3 in the prison population --

4 A. Before Suboxone came around, yes.

5 Q. You had to go through COs?

6 A. Yes.

7 Q. You had to corrupt them?

8 A. Right.

9 Q. You had to give them money?

10 A. That's right.

11 Q. Sometimes they would earn sexual favors
12 with people on the outside?

13 A. That's correct.

14 Q. And you knew members of the SNM or you
15 knew people in the prison population that are also
16 engaged in sexual activities with members of the
17 prison staff?

18 A. I know some, yes.

19 Q. Those were all ways to try to get drugs or
20 other benefits while you were serving your time?

21 A. I think those are more used just for
22 romantic relationships with the women.

23 Q. Okay. But did those women also sometimes
24 bring in weapons?

25 A. I couldn't say.

1 Q. Did they bring in drugs?

2 A. Not that I'm aware of.

3 Q. Did they bring in drugs?

4 A. Not that I'm aware of.

5 Q. Did they -- were they -- could be used or
6 utilized to gain access to illegal material in the
7 prison if they --

8 A. Yeah.

9 Q. You could -- so that members of the prison
10 population might, either through extortion or just
11 through romantic insistence, be able to get
12 something through those people?

13 A. A favor, yes.

14 Q. COs, for the most part, that was money?
15 That was how you got a CO to be corrupt?

16 A. Yeah.

17 Q. At page 6 there is a question, 95, right?
18 And it says -- the question says:

19 "Why was Castillo killed?"

20 Is that right?

21 A. Yes.

22 Q. And that was a Frank Castillo, Francisco
23 Castillo?

24 A. Francisco? I don't know that Francisco
25 was his name. I know him as Frank Castillo.

1 Q. Okay. Frank?

2 A. Yeah.

3 Q. Whatever?

4 A. Right.

5 Q. And you didn't answer that, did you?

6 A. I don't know nothing about the details of
7 that murder.

8 Q. Okay. And when asked whether or not Joe
9 Lawrence Gallegos or any of the other people named
10 there ever talked to you about the murder, you
11 said -- you left that blank, as well?

12 A. They never did.

13 Q. There is also there question number 104.
14 Are you aware that the Castillo murder is part of
15 this indictment?

16 A. The VICAR indictment?

17 Q. Yes.

18 A. Yeah. It's part of the indictment, yeah.

19 Q. And are you aware that a gentleman or a
20 man named Adrian Burns, he's also part of the
21 indictment?

22 A. That's correct.

23 Q. And Jose Gomez? He's also part of the
24 indictment?

25 A. Yes.

1 Q. So there are various counts that relate to
2 those individuals, listing them as possible victims?

3 A. That's correct.

4 Q. Okay.

5 A. And I don't have no information on those
6 assaults or murders.

7 Q. Okay. Well, we'll get to that. I'm
8 assuming that you know.

9 THE COURT REPORTER: I can't hear you.

10 MR. SINDEL: I'm sorry. I apologize. I
11 didn't say, really, anything of consequence. So I'm
12 going to ask him a question.

13 Q. Adrian Burns is murdered. The question
14 was:

15 "Why did this murder take place?"

16 You had no information on that?

17 A. I don't.

18 Q. Okay. And I asked you whether or not any
19 of the Gallegoses ever discussed with you the
20 murder. And you left that blank because --

21 A. I didn't answer it. They never did.

22 Q. And then on down to 108, in terms of this
23 Jose Gomez again:

24 "Why did this assault take place?"

25 No answer?

1 A. No answer --

2 Q. Because you --

3 A. -- on the questionnaire. And I couldn't
4 answer it even if -- there's no answer on the
5 questionnaire.

6 Q. Also on the question 109, the same thing:

7 "Why did this assault take place?"

8 Referring to the assault of Jose Gomez.

9 You just basically say that Joe is kind of
10 weird?

11 A. Right.

12 Q. Nothing to do with any assault or murder
13 or anything like that, right?

14 A. That's correct.

15 Q. And I wanted to ask you on the
16 questionnaire, question 121:

17 "Explain the hierarchy or chain of command
18 within the SNM."

19 You left that blank?

20 A. Where are you at?

21 Q. I'm sorry. 121.

22 A. Yeah, it's blank.

23 Q. On page 10 of that questionnaire, there is
24 a whole series of questions about Daniel Archuleta
25 and several other assaults. Those are all left

1 blank because you didn't know anything about it?

2 A. Archuleta.

3 Q. Archuleta, right.

4 A. Yeah. Wait. Yeah, it's blank.

5 Q. Thank you. You described yourself, I
6 think, as a soldier?

7 A. Yes.

8 Q. And a hitter?

9 A. No, not a hitter.

10 Q. Just a soldier?

11 A. A soldier.

12 Q. What's the distinction between a hitter
13 and soldier?

14 A. A hitter is someone who is known for
15 bringing in drugs consistently.

16 Q. And is there a designation within this SNM
17 hierarchy of a torpedo?

18 A. A torpedo.

19 Q. Yeah.

20 A. That's usually used in the idea that
21 you're going to use someone because they're already
22 used up, to make them seem like they're good again,
23 and send them on a mission, and then kill them
24 later.

25 Q. The idea being to fool them into thinking

1 that basically there is a chance for them?

2 A. That's correct.

3 Q. And did you ever hear that Joe Gallegos
4 had a green light on him?

5 A. Not a green light, no.

6 Q. He was questionable?

7 MS. ARMIJO: Objection; foundation.

8 THE COURT: He's saying he doesn't know,
9 so I think that needs a foundation, the question.

10 MR. SINDEL: All right.

11 BY MR. SINDEL:

12 Q. Have you ever heard from any source
13 whatsoever -- this is a "Yes" or "No" -- that Joe
14 Gallegos is a torpedo?

15 MS. ARMIJO: Objection; calls for hearsay.

16 THE COURT: Well, I think that -- well,
17 why don't we approach on these. We're probably
18 going to have these.

19 (The following proceedings were held at
20 the bench.)

21 THE COURT: In the last trial, we had some
22 of the rumors, those sort of things. I guess I
23 probably need to figure out -- in the last trial, I
24 think that was of some importance. Are these going
25 to be more, I need to come in and I instruct the

1 jury that they can't come in for the truth of the
2 matter, but only for somebody's state of mind or
3 impact?

4 MR. SINDEL: That's correct.

5 THE COURT: Do we care about his
6 statement? That's the problem.

7 MR. SINDEL: The only reason, he's used
8 that terminology in his 302s, and so he's the first
9 person I've had a chance to sort of get that in
10 through. So I'm trying to demonstrate that there
11 were individuals within the SNM which were
12 expendable.

13 THE COURT: But what is -- I guess I'm
14 trying to figure out how the rumor, if there is a
15 rumor, how it has any relevance in the case, so that
16 I can talk to the jury in an intelligent way, with a
17 limiting instruction, about this issue. If I tell
18 them they can't consider it for the truth of the
19 matter, what are they considering it for?

20 MR. SINDEL: Well, I think it would be,
21 since you said he was one of the decision-makers in
22 the SNM, I think he might be able to. It would go
23 to his role in that regard; that he saw them, just
24 like he may have seen other people, as being
25 torpedoes and expendable.

1 THE COURT: I think you can certainly talk
2 to him about whether he ever put a hit, was he
3 involved in the conspiracy to kill Joe Gallegos, but
4 I guess the question that you're asking now is --
5 I'm trying to figure it out.

6 MR. SINDEL: I'm trying to figure it out,
7 too.

8 THE COURT: Let me sustain it here, and
9 I'll keep an open mind if, down the road, we need to
10 get it in. In the last case, I think, with Rudy
11 Perez, I ended up instructing the jury because it
12 went into his whole defense.

13 MR. SINDEL: Would the Court be amenable
14 to maybe taking a lunch break now? I can then go
15 through the cross and cut it down a lot. That's
16 what I usually do when I get a chance.

17 THE COURT: Okay.

18 MR. SINDEL: Is that okay with the Court?

19 THE COURT: You don't have five or so
20 minutes to spend here? I don't want to waste
21 everybody's time.

22 MR. SINDEL: Not that I have without
23 rethinking the torpedo.

24 THE COURT: All right. I'll let the jury
25 go.

1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right. I think this would
4 be a good time for us to take our lunch break.
5 Let's shoot for being back in about an hour. Have a
6 good lunch. I hope it's a nice day out there. I
7 think the winds are coming back in, but it was a
8 nice day this morning. I'll see you in about an
9 hour.

10 (The jury left the courtroom.)

11 THE COURT: I didn't give you a ruling on
12 your objection. I am overruling it. I do think
13 it's relevant. But you were owed a ruling, so I
14 will overrule it.

15 All right. We'll see y'all in about an
16 hour.

17 (The Court stood in recess.)

18 THE COURT: I think I've got an attorney
19 for each defendant, and each defendant is in the
20 room. All right.

21 Anything we need to discuss before we
22 bring the jury in? For the Government?

23 MS. ARMIJO: No, Your Honor.

24 THE COURT: Do any of the defendants have
25 any issues? Mr. Burke?

1 MR. CASTLE: At some point in time, we'd
2 like to deal with the sequestration.

3 THE COURT: Well, I've looked at your
4 brief. I'm still not convinced. I mean, I think
5 Judge Bennett's -- there is nothing in the rules
6 that allows what he's doing. He's just trying to
7 put his sense of fairness there. So I'll keep
8 looking at the issue. It's on my radar. But I'm
9 not convinced.

10 MR. CASTLE: Are we prevented, then, from
11 telling our investigators to investigate something
12 we hear in court? Because if so, we're at a huge
13 disadvantage.

14 THE COURT: Anybody see any problem, from
15 the Government's standpoint, on that?

16 MR. BECK: No, Your Honor.

17 THE COURT: Okay. So that's fine.

18 All rise.

19 They're not lined up yet. Anything else
20 we need to discuss?

21 MR. SINDEL: Ice cream.

22 THE COURT: I've started going to
23 Caliche's. I'm going to have to bring new suits up
24 here. And if you do it once, you get in the habit;
25 then you have to start rewarding yourself.

1 (A discussion was held off the record.)

2 (The jury entered the courtroom.)

3 THE COURT: As you came in, you caught us
4 talking about Caliche's, the frozen custard place.
5 If you're not familiar with Las Cruces and haven't
6 tried it, it's very good; but then it gets
7 addictive. I told them I'll probably need to bring
8 a new suit down that's a little larger if I start
9 getting in the habit, going to Caliche's every
10 afternoon.

11 Mr. Rodriguez, if you would return to the
12 witness stand. I'll remind you, you're still under
13 oath.

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Mr. Sindel, if you wish to
16 continue your cross-examination of Mr. Rodriguez,
17 you may do so at this time.

18 MR. SINDEL: Thank you, Your Honor.

19 BY MR. SINDEL:

20 Q. Mr. Rodriguez, I had showed you, earlier
21 today, Government's Exhibit 607. That was the
22 judgment and sentence and other documents that
23 pertained to the John Hardy case that came out of
24 Grant County Detention Center?

25 A. Yes, sir.

1 Q. Do you remember that?

2 A. Yes.

3 Q. And there was some discussion we had, and
4 I just want to make sure I clear it up, about
5 whether the judgment was consistent with the plea
6 and disposition agreement that you had entered into?

7 A. Yes.

8 Q. On that particular document, you don't
9 have -- you don't sign anything; that's the Judge
10 that signs off on the judgment and sentence, right?

11 A. I don't know.

12 Q. Do you want me to show it to you again?

13 A. Yes.

14 Q. And just so the jury is clear, you
15 referred to this in the vernacular as a J and S, a
16 judgment and sentence? Yes?

17 A. No, I did not sign it. I don't even think
18 there's a place for me to sign it. Correct.

19 Q. There isn't. Let's see if there's a place
20 for you to sign on this document.

21 MR. SINDEL: Your Honor, may I approach?

22 THE COURT: You may.

23 Q. So this document I'm showing you now,
24 that's labeled a "Plea and Disposition Agreement"?

25 A. Yes, that's what it's labeled.

1 Q. And these are all the case numbers that
2 were involved in the multiple charges that you had
3 pending against you in Grant County?

4 A. I believe this is the amended version.

5 Q. This is -- well, I'll show you the amended
6 version.

7 A. Okay.

8 Q. This is not -- take a look at it. So in
9 this particular document, the plea agreement, that
10 contains the agreements that were entered into and
11 the circumstances, the charges, things like that,
12 that pertain to the plea that you entered in
13 connection with the assaults and the criminal sexual
14 penetration of that man?

15 A. Yes.

16 Q. Now, if you look on the front there on the
17 first page, like you said to the jury, you pleaded
18 no contest?

19 A. That's correct.

20 Q. That means that you're not contesting the
21 charges? You just say, "There you go"?

22 A. That means that I'm pretty much bowing out
23 of defending myself against the crimes.

24 Q. Right. And in those documents, it refers
25 to the kidnapping, and that had to do with

1 restraining this man in the cell, where he couldn't
2 get away?

3 A. No, not restraining him. Holding him
4 against his will when the cell door is locked. No
5 one could get out of the cell.

6 Q. Right. When he was on the floor and you
7 guys were beating and kicking him, did you feel like
8 that was any kind of restraint?

9 A. I wasn't a part of that.

10 Q. You had said earlier that you did hit him
11 in the face?

12 A. Yes, but I wasn't a part of the group
13 beatings.

14 Q. Oh. So you did it on your own?

15 A. Yes.

16 Q. Oh, good. All right.

17 A. Are you relieved?

18 Q. Not exactly. I'm close.

19 All right. So then you would beat him. I
20 guess he'd be laying on the floor, slobbering, snot
21 coming out of his nose, blood, everything else, as
22 you beat him up?

23 A. No.

24 Q. Okay. As to the other counts, the Count
25 3, that's the criminal sexual penetration?

1 A. That's correct.

2 Q. And then this plea agreement, you signed
3 it without any reference to aiding or abetting?

4 A. Yes, that's correct.

5 Q. And no reference to backing with another?

6 A. Yes, there is a reference to others.

7 Q. Can you tell me where it says others?

8 A. Jason Lucero's cell. That's another
9 individual.

10 Q. Held in Jason Lucero's cell?

11 A. That's correct.

12 Q. That's the kidnapping?

13 A. Yes, but --

14 Q. I'm asking about criminal sexual
15 penetration.

16 A. Okay. No, there is nothing that clarifies
17 it, who did it.

18 Q. Okay. It doesn't mention any other person
19 at all, does it?

20 A. Other than the defendant.

21 Q. Yeah. And that's you?

22 A. That's correct.

23 Q. And then in terms of Count 4, the same
24 thing, right?

25 A. That's correct.

1 Q. One is the hot sauce, and one is the
2 lotion?

3 A. Yes.

4 Q. Were you present when he was forced to
5 drink a cup of his own urine?

6 A. I believe I was in the cell, yes.

7 Q. You've also -- I think you consider
8 yourself a creative person?

9 A. Based on what?

10 Q. Creative? You've written fiction, you've
11 written essays, right?

12 A. Yes. I've written as a hobby, yes.

13 Q. You've talked to Jose Jackson about
14 writing a novel or a book?

15 A. Jose?

16 Q. Hosie.

17 A. Oh, yes. I don't know if I did. Yeah,
18 probably.

19 Q. And you talked to him about writing your
20 memoirs?

21 A. That's correct.

22 Q. Do you know who Jack Abbott is?

23 A. Jack Abbott?

24 Q. Yes.

25 A. No.

1 Q. Have you ever heard of "In the Belly of
2 the Beast"?

3 A. Yeah, I know he's an author, but I never
4 read nothing of his.

5 Q. You didn't read that?

6 A. No.

7 Q. Now, you also became friendly with a
8 gentleman named Keith Mark Johnson, correct?

9 A. That's correct.

10 Q. And Mr. Johnson would take some of your
11 writings and reduce them to typed form, correct?

12 A. Yes.

13 MR. SINDEL: May I approach, Your Honor?

14 THE COURT: You may.

15 Q. I'm going to show you what's been an
16 unmarked exhibit, which is an essay, labeled, "An
17 Essay by Mario Rodriguez"; is that right?

18 A. That's correct.

19 Q. "Inmate Level 6"?

20 A. Yes.

21 Q. And there is a highlighted area under the
22 first paragraph of that essay. Would you read to
23 the jury what it says?

24 A. "I believe in my heart of hearts that all
25 of my crimes are all because I never harmed an

1 innocent person."

2 Q. Had Mr. Hardy in any way disrespected you?

3 A. Yeah.

4 Q. How?

5 A. When he was there, I attempted to give him
6 a haircut, and he didn't want the haircut, so he
7 elbowed me in the chest, yes.

8 Q. He elbowed you in the chest?

9 A. Right. That was a form of disrespect.

10 Q. Okay. And did he -- did he say anything
11 to you, after you had beaten him up, about how he
12 didn't take too kindly to being slugged in the face,
13 Ajax cleanser shoved up his nose?

14 A. Let me clarify. He was never slugged in
15 his face. He was never beaten in his face at all.
16 It was --

17 Q. Oh, never slugged?

18 A. Exactly. That was the purpose. Yeah,
19 people were beating him on the body.

20 Q. You didn't consider him in any way an
21 innocent person because he was in jail?

22 A. He was in jail, yeah.

23 Q. I'm showing you this document here. It's
24 called "The Writings of Mario Rodriguez"?

25 A. Yes.

1 Q. The second paragraph, there's a
2 highlighted portion, is there?

3 A. Yes.

4 Q. Yeah?

5 A. "This is what I believe." What's that in
6 reference to?

7 Q. This is in reference to the writing you're
8 making, right?

9 A. Right.

10 Q. Right there?

11 A. Right.

12 Q. There's an introduction there, "This is
13 what I believe," right?

14 A. That's what it says.

15 Q. You wrote it?

16 A. Yeah.

17 Q. And does it say there, "Accepting
18 generosity and never returning it, you gain six
19 points by cheating. So the lesson seemed to be if
20 you could spend your life exploiting people, by all
21 means do it"?

22 A. That's correct. That's what it says. But
23 that's not my writing.

24 Q. Is it in the essay that you said, "This is
25 what I believe"?

1 A. You're reading one paragraph. I'm not
2 answering that because you're trying to switch one
3 paragraph into another paragraph that's about 20
4 pages away.

5 Q. Wait a minute. Oh, I see.

6 A. Yeah, you see.

7 Q. When you wrote, "This is what I believe,"
8 that wasn't a true statement; is that right? Is
9 that right? Let go of it.

10 A. What I believe is, one time in prison, a
11 person finds --

12 Q. Let go of this, sir. You know, please.

13 A. You're not going to switch up my words
14 from one paragraph to 20 words away, into another
15 paragraph.

16 Q. I get to ask the questions.

17 A. So I'm not going to read it, because it's
18 not even my writing.

19 Q. Let me see if I can --

20 A. The writing he's referring to is a book by
21 Wright called "The Moral Animal." It's based on
22 friendship.

23 MR. SINDEL: Nonresponsive. Objection,
24 Your Honor?

25 A. Which is exploiting one another.

1 THE COURT: Mr. Rodriguez.

2 I'm striking his answer.

3 You listen to the question, Mr. --

4 THE WITNESS: I'm not going to answer.

5 THE COURT: Well, listen to the question
6 first, and let Mr. Sindel ask his question.

7 So the jury will disregard that answer,
8 and it's stricken from the record.

9 All right. Mr. Sindel.

10 BY MR. SINDEL:

11 Q. "This is what I believe:"? Colon.
12 Correct?

13 A. I don't know. That's not my writing,
14 because it's not my handwriting. It's typed.

15 Q. Okay. Did you send it to Mr. Johnson so
16 he could type it up?

17 A. No. He was a teacher within the Level 6,
18 and he took it.

19 Q. Listen to my questions.

20 A. No, I did not send it to him.

21 Q. How did he get?

22 A. I gave it to him in person.

23 Q. Okay. That's a difference. So when he
24 wrote this stuff or typed it up for you, did he make
25 changes in it?

1 A. I don't know. I haven't read it in a long
2 time. It's a possibility.

3 Q. Well, is this -- do you think he's
4 writing, Mr. Johnson is writing what he believes?

5 A. Well, you'll have to ask him.

6 Q. And does it say in this document, "It just
7 depends what side of life you are judging. For some
8 reason, I can't regret my choice, no matter how
9 harshly judged and shamed"?

10 A. That's my writing, yes.

11 Q. Now, we talked earlier today about the
12 tablet. In February of -- February 7th, February
13 8th, did you have that tablet available to you?

14 A. What was the date?

15 Q. February 7th and February 8th, 2018.

16 A. February 7th, February 8th, 2018?

17 Q. Yes.

18 A. Yes, I have it.

19 Q. When was it they took the tablet from you?

20 A. When?

21 Q. I asked you earlier, or I thought I did,
22 whether you had the tablet, and you said "No"?

23 A. I never said that. I said it wasn't
24 upgraded.

25 Q. All right. Did you have the tablet last

1 night?

2 A. Yes. I've had it since the beginning of
3 the case.

4 Q. And have you had it basically every day,
5 except for those times when it's being charged?

6 A. In the beginning, yes.

7 Q. And now you can charge it yourself, right?

8 A. That's correct.

9 Q. You've got an outlet in your cell now,
10 right?

11 A. That's correct.

12 Q. And does it include phone calls that
13 made -- amongst people that were either charged or
14 not charged, audio recordings?

15 A. Yes.

16 Q. Does it contain photographs?

17 A. Of who?

18 Q. Anyone? Photographs.

19 A. It sure does, yes.

20 Q. You've seen it, right? I haven't seen
21 your tablet.

22 A. You haven't seen your client's discovery?

23 Q. I haven't seen your tablet, sir.

24 A. Oh, yeah. It's the same as your client's.

25 Q. Does it include audio and videotapes?

1 A. I believe it does.

2 Q. You believe it does? Or do you know it
3 does?

4 A. I believe it does, yes.

5 Q. Because it does contain them, right?

6 A. Yes.

7 Q. It contains all sorts of investigative
8 documents?

9 A. That's correct.

10 Q. It contains FBI reports and reports of
11 interviews, right?

12 A. That's correct.

13 Q. It contains, basically, as far as you
14 know, all the discovery that's available to any of
15 these individuals in this case?

16 A. That's correct.

17 Q. So you can read and find out what somebody
18 else -- you can read and find out what Julian
19 Romero's testimony has said, right?

20 A. Who?

21 Q. Julian Romero.

22 A. Julian?

23 Q. Yeah. You can read what he says?

24 A. You're talking about Julian Romero?

25 Q. Yeah.

1 A. Yeah.

2 Q. You can read what, basically, anyone who
3 has given a report to the FBI, you can read and see
4 exactly what they claimed happened, right?

5 A. That's correct.

6 Q. Now, as a result of being convicted of
7 criminal sexual penetration, do you understand that
8 you have to register as a sex offender?

9 A. That's correct. If I was to get out in
10 society, I would.

11 Q. And that's something you don't want to
12 have to do, isn't it?

13 A. Well, I never thought I was going to get
14 out to society. It wasn't probably one of the
15 things I was going to have to. But no, I wouldn't
16 have enjoyed that. No.

17 Q. Certainly, you don't want to have to
18 register as a sexual offender if the Government is
19 able to give you some deal that puts you back on our
20 neighborhoods and in our streets, do you?

21 A. If I have to, I'm going to.

22 Q. Obviously, you're going to have to; the
23 law requires it. But you wouldn't want to?

24 A. I wouldn't want to, but I'm going to
25 follow the law.

1 Q. Okay. And the situation is that actually,
2 you've filed pleadings in court in an attempt to try
3 and get that condition removed, haven't you?

4 A. I filed ineffective assistance against my
5 lawyer, yes.

6 Q. And those are called petitions for writs
7 of habeas corpus, right?

8 A. I filed three of them.

9 Q. And in terms of those, what you understand
10 those to be, based upon your education and educating
11 yourself, is that to say that you are being
12 illegally detained because you didn't have the
13 quality of a lawyer that the Constitution requires?

14 A. Yes. The lawyer didn't explain to me the
15 requirements of pleading out to a charge like that,
16 yes.

17 Q. And in three times, you have not been
18 successful in getting that condition removed, have
19 you?

20 A. I think the second time, I was -- I was on
21 the verge of being successful, and then I was going
22 to file one to the federal courts, and I just said,
23 "Fuck it." I just pulled it. I didn't file to the
24 federal courts.

25 Q. So you don't have any pleading that says,

1 "I want to go to federal courts and challenge this?"

2 This is all in state court, correct?

3 A. Yeah. I told my lawyer, "Just forget it."

4 Q. And you lost those proceedings?

5 A. That's correct.

6 Q. And so as you understand it, you have to
7 register as a sex offender?

8 A. If I was to get in society, yes.

9 Q. And did you also at one time believe that
10 if you got into the WITSEC program, that particular
11 requirement might not remain?

12 A. I don't know if it would, but if it's part
13 of the process, maybe I would. I don't know. I
14 would hope not.

15 Q. You certainly -- some of the arrangements
16 and deals that you have with the Government, with --
17 you call her "Maria" and you call him "Matt" or
18 "Matthew?" Do you call Mr. Beck "Matt"?

19 A. Matthew Beck.

20 Q. Do you call him "Matt"?

21 A. No.

22 Q. Do you call Mr. Castellano "Randy"?

23 A. No.

24 Q. So the only one you call by first name is
25 Maria; is that right?

1 A. Yes, sir.

2 Q. When you're making deals with these people
3 that we're talking about, you have asked Sergeant --
4 I mean Agent Acee -- to carry the water for you and
5 to try to help you get through this process with the
6 least possible damage?

7 A. Carry water for me?

8 Q. Yeah. Be a spokesman for you?

9 A. I never asked him to be a spokesman for
10 me. How? In which way?

11 Q. Well, let me see:

12 "November. SC Acee advised the CHS" --
13 that's you -- "that Mr. Rodriguez could be
14 recommended to the federal witness security program
15 if you become a witness."

16 Do you remember discussing that with Agent
17 Acee?

18 A. I don't. You got it on paper so I can
19 refresh my memory?

20 Q. Sure.

21 MR. SINDEL: May I approach?

22 THE COURT: You may.

23 A. I think this is -- I don't know what this
24 is. That's what it says, yes, that he could
25 recommend that. I don't think I ever asked him

1 that.

2 Q. So you never even discussed the WITSEC
3 program?

4 A. I discussed --

5 Q. I showed you a document this morning in
6 your own handwriting.

7 A. Right.

8 Q. Okay. So you have discussed it with him?

9 A. My -- my asking of him was to go to a
10 prison with no gang activity. I think that's what
11 it was.

12 Q. Do you remember the handwritten document
13 that I showed you that was attached to the FBI 302?

14 A. Yes.

15 Q. That was your handwriting, was it not?

16 A. Yes, it was.

17 Q. And it referred to the WITSEC program, did
18 it not?

19 A. The witness protection facility.

20 Q. You talked about Silver City?

21 A. And?

22 MR. SINDEL: May I approach, Your Honor?

23 THE COURT: You may.

24 Q. This is what I showed you in a slightly
25 more legible copy today, right?

1 A. Yes.

2 Q. "I'm looking to get a WITSEC protection
3 identity." Correct?

4 A. That's correct.

5 Q. "Due to me being so well known within the
6 New Mexico Department of Corrections" -- and you use
7 the initials -- "and my hometown." Correct?

8 A. That's correct.

9 Q. This other page here, that's part of what
10 you're trying to get, what you're trying to
11 negotiate for standing here or sitting here and
12 answering my questions?

13 A. Do you think that's what I'm trying to
14 negotiate?

15 Q. I don't know.

16 A. I already told you what this was.

17 Q. What this is, is your hope that they will
18 consider running your sentences concurrent?

19 A. No.

20 Q. So that you don't have to do state and
21 federal time?

22 A. That is a measurement. That is a
23 measurement of how much time I'm doing presently.
24 And it is ran concurrent.

25 Q. On the document that I showed you, that

1 you are requesting to be utilized in trial as a
2 witness so you could qualify for the witness
3 security program?

4 A. There you go.

5 Q. That's what you want, right?

6 A. That's what they put in there, and I
7 guess -- yeah. I would like to go to a WITSEC
8 facility, yeah.

9 Q. Did they just pull this out of thin air?

10 A. I've never seen that.

11 Q. I didn't ask you that, did I?

12 A. No matter. I never seen that. I'm
13 telling you.

14 Q. They just pulled this out of thin air,
15 made this up?

16 A. Maybe they did. I don't know.

17 Q. You think Agent Acee is making these
18 things up and giving it to defense counsel?

19 A. I've never seen that.

20 Q. I didn't say that, did I, sir?

21 A. What are you saying?

22 Q. "That Rodriguez requested to be utilized
23 in trial as a witness so he could qualify for the
24 witness security program?"

25 A. Then I guess at some point in time, that

1 that's what I requested.

2 Q. Maybe you did.

3 A. Let's just say I did, then.

4 Q. Okay.

5 A. There you go.

6 Q. There you go. And Sergeant -- I mean
7 Special Agent Acee told Rodriguez he would likely be
8 called as a witness?

9 A. Well, yeah. I was involved in a murder.
10 Of course, I would be.

11 Q. And that you would be recommended to the
12 federal witness security program if you became a
13 witness. You read that in there, didn't you?

14 A. That's what you just read.

15 Q. And, in fact, didn't you talk to Mr.
16 Sanchez about the witness protection program?

17 A. Yeah, I did.

18 Q. Did you write him a letter about the
19 witness protection program?

20 A. Daniel Sanchez? I spoke to two Sanchezes.
21 I spoke to two of them.

22 Q. Did you talk --

23 A. I talked to -- ready?

24 Q. Go ahead.

25 A. I talked to Ronald Sanchez about the

1 possibility of him and his brother doing time in a
2 facility where they didn't have to get in no more
3 trouble, where everything that was based on their
4 behavior, they got to have; that the SNM wouldn't be
5 the cause of anything to do with their lives no
6 more.

7 Q. Did you write Daniel Sanchez a letter?

8 A. Yes, I did.

9 Q. And did you talk to him about the witness
10 protection program?

11 A. I think I told him.

12 Q. That's a "Yes" or "No," sir.

13 A. Yes, I did.

14 Q. And was that -- did you tell him, "A new
15 identity record means your guys go hunting again
16 legally"?

17 A. That's what I told him.

18 Q. And that's because you knew as a felon, he
19 couldn't legally possess a firearm?

20 A. And he still can't. When you're --

21 Q. Well, you thought at that time he could?

22 A. I thought at that time, yes.

23 Q. You thought you'd get a totally new
24 identity, right?

25 A. That's a possibility, yes.

1 Q. And if you got a new identity, you would
2 no longer be the Mario Rodriguez who criminally
3 penetrated another individual, would you?

4 A. I did not criminally penetrate him. But
5 yes, I was present at the crime, yes.

6 Q. And if you got a new identity, you might
7 not have to register, right?

8 A. I do not know.

9 Q. You thought that, didn't you?

10 A. No.

11 Q. Well, you certainly believed you could
12 carry weapons, right?

13 A. I think that's a bow and arrow.

14 Q. Well, you didn't say that, did you?

15 A. No, but I found out real quickly.

16 Q. You found out you couldn't do that, right?

17 A. That's correct.

18 Q. You can't run away from your history as a
19 sexual offender?

20 A. Cannot.

21 Q. But you were at least hoping that if you
22 could get out on the streets, you wouldn't have to
23 register as a sexual offender, because you hoped you
24 could get a new identity, right?

25 A. That's just the thing. I'm not a sexual

1 offender.

2 Q. Well, you are.

3 A. A sexual offender is people who touch
4 little kids and rape women. That's a sexual
5 offender in the prison world.

6 Q. Well, I'm not talking about the prison
7 world.

8 A. Well, here we are, in a prison case.

9 Q. I'm talking about --

10 A. In the prison world, your society, your
11 rules, don't matter.

12 Q. I asked you a question.

13 MR. SINDEL: Nonresponsive; objection.

14 THE COURT: I'll strike Mr. Rodriguez's
15 answer, and you'll not consider it.

16 Why don't you wait for Mr. Sindel to ask
17 you a question, and then respond to it.

18 THE WITNESS: Okay, Your Honor.

19 THE COURT: Mr. Sindel.

20 BY MR. SINDEL:

21 Q. Whether in the prison world or not you
22 would be considered a sexual offender, you certainly
23 understand that you have to, by law, because of what
24 you pled guilty to, register as a sexual offender?

25 A. That's correct.

1 Q. And if you got into the WITSEC program, it
2 was your hope that you could get out of prison and
3 maybe wander the streets again without the identity
4 that required you to register as a sexual offender?

5 A. That's correct.

6 Q. One last favor. Please don't move to
7 Missouri.

8 MR. SINDEL: That's all I have.

9 MS. ARMIJO: Objection, Your Honor;
10 argument.

11 THE COURT: Sustained. We don't need
12 comments like that.

13 MR. SINDEL: I'm sorry, Your Honor.

14 THE COURT: Anyone else have questions?
15 Mr. Burke?

16 MR. BURKE: No questions.

17 THE COURT: No questions?

18 Mr. Granberg?

19 CROSS-EXAMINATION

20 BY MR. GRANBERG:

21 Q. Good afternoon, Mr. Rodriguez. I
22 represent Mr. Christopher Chavez. I'd like to ask
23 you a couple of questions about him.

24 You stated earlier that you barely knew
25 Mr. Chavez; is that correct?

1 A. That's correct.

2 Q. And you only knew of him?

3 A. I knew of him before I met him, yes.

4 Q. Okay. Did you have any personal
5 interactions with him?

6 A. When I met him, yes.

7 Q. Well, you said a moment ago you knew of
8 him?

9 A. I knew of him before I met him, yes.

10 Q. So when did you meet him?

11 A. I met him when I was going down to state
12 court on the Molina murder, when I was being housed
13 at the Southern New Mexico Correctional Facility.

14 Q. And did you have an interaction with him?

15 A. Yes.

16 Q. What did the interaction consist of?

17 A. I had an interaction with him in the yard,
18 where -- because I had a stabbed a Barelas member, a
19 member of his gang. We were talking about the
20 streets, and how the Barelas were upset with the
21 members of the SNM that were from Barelas. And that
22 he didn't give a fuck, though, because who was
23 stranger, and that him and Boo-Boo were killers, and
24 no one told him nothing.

25 Q. Okay. And that consisted of the

1 interaction?

2 A. That was the interaction. There was other
3 just bullshit talk and regular prison politics. But
4 it was -- he was an artist, I was an artist. We
5 drew.

6 Q. At any point did he admit to you that he
7 was an SNM member?

8 A. No. He called me "carnal." That's it.

9 Q. Well, in New Mexico, there is a large
10 prison gang called Carnales, correct?

11 A. Los Carnales?

12 Q. Carnales.

13 A. No.

14 Q. And in the Spanish vernacular, men often
15 refer to other friends as "carnales"; is that
16 correct?

17 A. Why? Is your client a Los Carnales
18 member?

19 Q. No. I'm saying, if he knows Spanish, he
20 may use the term?

21 A. Not within the prison system, no. You
22 call someone a "carnal" in prison, you're a member
23 of the SNM. Unless he's claiming he's an LC member.
24 I don't know.

25 MR. GRANBERG: Pass the witness.

1 THE COURT: Thank you, Mr. Granberg.

2 Ms. Torracco, do you have cross-examination
3 of Mr. Rodriguez?

4 CROSS-EXAMINATION

5 BY MS. TORRACO:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. I'm a little confused about something, and
9 perhaps you can help me clear it up.

10 On direct examination, when Ms. Armijo was
11 asking you questions, you testified earlier that
12 Andrew had given you a care package. Do you
13 remember that?

14 A. He sent a care package, yes.

15 Q. Sent a care package.

16 A. He didn't give it to me in person. He
17 sent it through the CO to his brother, and his
18 brother disbursed it.

19 Q. That's not what you testified to on
20 direct.

21 A. Okay.

22 Q. On direct, you testified that Andrew had
23 gotten you a care package; correct?

24 A. It came from him, yes.

25 Q. And on direct, you never said anything

1 about Joe giving you a care package?

2 A. No, I don't remember if I did.

3 Q. But on cross-examination, you suddenly
4 brought up that there was a care package that went
5 from Andrew to Joe to you?

6 A. To three or four of us. It got disbursed.

7 Q. So my question is: Isn't it true that you
8 changed your story for cross-examination?

9 A. No. It's just, I didn't elaborate to the
10 fullest of it.

11 Q. Okay. You left out a detail?

12 A. Joe, yes.

13 Q. Okay. And is that because somehow you
14 wanted to -- you realized you didn't want to
15 incriminate Andrew; and instead, you wanted to
16 incriminate Joe?

17 A. No. I don't want to incriminate no one.
18 I'm just up here telling the facts of what I know.

19 Q. Okay. So you just left out part of that
20 on your direct exam?

21 A. On accident.

22 Q. On accident?

23 A. Yes, ma'am.

24 Q. Let's talk about that care package. That
25 care package did not have any contraband, did it?

1 A. No, ma'am.

2 Q. And the care package was something that
3 contained things from the canteen or commissary? Is
4 that what you call it?

5 A. Yes, ma'am.

6 Q. The commissary?

7 A. Yes.

8 Q. So it was all legal things within the
9 jail?

10 A. That's correct.

11 Q. Okay. And you're saying that you think it
12 came from Andrew, because he had said something to
13 you in a transport van?

14 A. He asked us what we needed.

15 Q. And did you tell him you needed soap?

16 A. Soap, deodorant. The carnals were
17 relating it to him, yes. But I was right there in
18 the conversation.

19 Q. Okay. Were you in the courtroom when
20 someone needed a jacket, and Andrew volunteered to
21 give him his jacket?

22 A. When?

23 Q. Were you in the courtroom when Andrew
24 volunteered to give his jacket to someone else who
25 needed a jacket?

1 A. Today?

2 Q. Yes.

3 A. I wasn't aware of that, no. I was
4 probably here, but I wasn't aware of it.

5 Q. And so why -- if he gave you something
6 that was kind --

7 A. Right.

8 Q. -- he did an act of human kindness?

9 A. Yes, he did.

10 Q. He expressed empathy for you?

11 A. That's correct.

12 Q. Why did you testify about it today like he
13 did something wrong?

14 A. He didn't do nothing wrong. I never said
15 it was wrong. I appreciated the offer. What I'm
16 saying is that that's just how it goes when you show
17 up somewhere and you have care packages. And I
18 appreciate what he did for me. It's not to -- I'm
19 not up here making accusations about facts to his
20 case. I haven't made accusations in any way, shape,
21 or form.

22 Q. Okay. Mr. Rodriguez, you did. Because
23 Ms. Armijo asked you a question about it, and you
24 readily volunteered that Andrew had given you a care
25 package?

1 A. That's true.

2 Q. Right? Had you talked about that ahead of
3 time with Ms. Armijo?

4 A. I think I did, yes.

5 Q. Well, otherwise, she wouldn't have known
6 to ask the question, right?

7 A. Yes, ma'am.

8 Q. And so, therefore, there was an
9 implication that somehow Andrew did something that
10 was wrong?

11 A. It wasn't wrong. It was showing the
12 relationship between the carnals.

13 Q. That's what you think it was, right?

14 A. That's what it is.

15 Q. No. You don't know what's in Andrew's
16 mind, do you?

17 A. Neither do you.

18 Q. Well, I know better than you, because I
19 talk to him.

20 How many times have you spoken to him?

21 A. Transport van. That's it.

22 Q. One time?

23 A. That's correct.

24 Q. And you decided that somehow him being
25 kind to you was some gang thing?

1 A. It is a gang thing. We're all carnals.

2 Q. Objection -- sorry. You need to answer my
3 questions. Okay? And you're volunteering all this
4 other information.

5 You decided -- "Yes" or "No" -- that
6 because he showed you an act of kindness, that it
7 must have been because it was a gang thing?

8 A. Yes.

9 Q. And yet, you don't know Andrew Gallegos
10 from before that moment; isn't that true?

11 A. I do not.

12 Q. You had never met him before?

13 A. No, ma'am.

14 Q. So you don't know if that's Andrew's
15 personality; isn't that true?

16 A. As far as what?

17 Q. That he is very giving, kind, and generous
18 person.

19 A. I'll let you believe that. But no, I do
20 not know.

21 Q. You don't know either way?

22 A. I don't know either way.

23 Q. You jumped to the conclusion that it was
24 because it was a gang something?

25 A. We're all gang members there. I know. I

1 lived this life. It's not a bad thing, you know.

2 Take pride in it, I guess.

3 Q. It's a bad thing to me.

4 A. Well, there you go. Then you should blame
5 him for that.

6 Q. So then your testimony on direct was, he
7 made a comment about "carnals"?

8 A. That he called us "carnals"?

9 Q. Right. Was he looking at you when he said
10 that?

11 A. He was talking to the group of us that
12 were there. Not me directly. I don't know who he
13 was looking at.

14 Q. Okay. He was not talking to you?

15 A. No, probably not.

16 Q. That's right. In fact, what does
17 "carnals" literally mean?

18 A. It means brother.

19 Q. Brother?

20 A. Brothers, yeah. "Carnales" or "carnal"?

21 Q. Isn't it true that his brother was in that
22 van?

23 A. Yes, he was.

24 Q. Thank you.

25 Now, it seems to me -- and I'd like to go

1 on to this issue about you being proud of the crimes
2 that you've committed. And that's how it comes
3 across to me. Is that true, that you're proud of
4 these?

5 A. I was at one point in time, until I
6 started reflecting and writing. And there comes
7 shame with it. I was proud at one time, yes, I was.

8 Q. Well, it seems like you're pretty proud
9 when you're testifying.

10 A. I'm talking about the acts I committed,
11 yes.

12 Q. And you made sure that all the lawyers
13 knew all the details, like stabbing people's eyes
14 and hitting their face, right?

15 A. That's what happened.

16 Q. And that's because you were an SNM member,
17 right?

18 A. That's correct.

19 Q. And when you're an SNM member, you're
20 proud of what you do?

21 A. Yes, ma'am.

22 Q. A badge of honor?

23 A. Yes.

24 Q. And because of that, you were respected?

25 A. Yes.

1 Q. And you liked the respect that you got?

2 A. Yes, I did.

3 Q. People were afraid of you?

4 A. I don't know. They never admitted to it.

5 Q. Well, what do you think?

6 A. I think most guys were afraid of me, yes.

7 Q. Okay. And even though you didn't admit to
8 the administration until much later that you were
9 SNM, people -- everyone knew that you were SNM?

10 A. Everyone within the prison system and
11 STIU, the administration, yes, ma'am.

12 Q. Okay. They all knew that you were SNM?

13 A. Everyone knew, yes, but they couldn't
14 validate me.

15 Q. And you wanted them to know, right?

16 A. Well, you know, everyone knows who an SNM
17 member is, just by the way we talk.

18 Q. Did you want them to know?

19 A. Well, of course. That's why I did the
20 crimes I committed for them.

21 Q. Okay. Because you wanted that -- whatever
22 -- that badge of honor?

23 A. That's correct, Miss.

24 Q. Or you wanted that respect, right? But
25 you wanted the notoriety?

1 A. At one point in time, yes.

2 Q. Because that's part and parcel of being
3 part of SNM; correct?

4 A. Yes, ma'am.

5 Q. Is the notoriety for being a really bad
6 guy?

7 A. Yes.

8 Q. Okay. And you were also a really good
9 soldier, weren't you?

10 A. Well, you're going to have to ask these
11 guys. I don't know.

12 Q. No, I'm asking you.

13 A. I believe I was.

14 Q. Thank you. And you would say that if you
15 were told to do something that was SNM, you'd do it?

16 A. That's correct.

17 Q. And you would do whatever you were told to
18 do; correct?

19 A. Yes, ma'am.

20 Q. And the fact that this stabbing is on
21 video, that didn't bother you, did it?

22 A. No.

23 Q. As a matter of fact, it's fine that it's
24 on video, isn't it?

25 A. It's fine. Yeah, it helps.

1 Q. Because it's actually better than fine,
2 because it builds you up, right?

3 A. We never seen this until the discovery
4 came out. This was used for the academy, for the
5 COs to learn from it.

6 Q. When you were in the pod and -- what's his
7 name? -- Esparza was going to the bathroom, into the
8 showers, you knew there was a CO right there?

9 A. Yes.

10 Q. And you didn't care if the CO saw you pull
11 a shank and start stabbing Esparza?

12 A. No.

13 Q. And you knew that what happens in the pod
14 is videotaped?

15 A. Yeah. There is cameras, yes.

16 Q. You knew there were cameras?

17 A. Right.

18 Q. You knew somehow -- maybe "videotape" is
19 the old-fashioned word, but you knew somehow
20 everything in the pods were recorded?

21 A. That's correct.

22 Q. You didn't care about that, did you?

23 A. No.

24 Q. Because you're not trying to hide your
25 crimes?

1 A. You're not trying to hide your crimes at
2 all. You face them and you take responsibility for
3 them.

4 Q. Right. Because you're proud of SNM?

5 A. That's right.

6 Q. And at this point, or at some point, you
7 started to self-admit that you were SNM; correct?

8 A. At what point?

9 Q. I don't know. You tell me.

10 A. Self-admit to who?

11 Q. Well, I get to ask the questions, and you
12 get to answer.

13 A. Well, I need you to clarify.

14 Q. Okay. You self-admitted always in the Pen
15 to other inmates; correct?

16 A. I never went around saying, "Hey, I'm SNM.
17 Hey, how you doing? I'm SNM." No.

18 Q. Okay. Well, then, how did people know you
19 were SNM?

20 A. Because we have our language that we went
21 with. When we're in the yard, we just talk to
22 carnals, "Hey, what's up, carnal?" Everyone in the
23 prison system -- no one calls each other "carnal"
24 other than SNM. The prison system, when you're in
25 the yard and people call you "carnal," it's

1 instantly known that you're an SNM member.

2 Q. Says you?

3 A. Yeah. Says me, yes.

4 Q. But you've also told us a bunch of rules
5 that seem to be rules one day, and maybe not rules
6 another, or maybe you didn't even know the rules.

7 Do you remember all the rules, how you said nobody
8 really tells you the rules?

9 A. I believe people were told. But the way I
10 was, you don't have to tell me the rules. I was
11 already a convict, and the way I carry myself was in
12 a rightful way. That's why I was recruited by the
13 SNM. I was recruited because of my violence in the
14 SNM.

15 Yeah, no one sat me down and told me,
16 "This is Rule Number 1," or, "This is Rule Number
17 2."

18 They come to you and say, "Hey, do you
19 have a shank?"

20 "No."

21 "Well, here's one, and make sure you
22 always have one."

23 Q. So you kind of learn some rules as you go?

24 A. Yes. You learn rules as you go. You
25 learn politics as you go. You learn who is who, and

1 who it's good to be close to. You know what I mean?
2 You learn as you go.

3 Q. Okay. So I've been different places --
4 let's say I was in a parking lot. I've heard people
5 call other people "homies." Not in my vocabulary,
6 but I've heard that on the streets. Are you telling
7 me they were SNM?

8 A. We don't call each other that. We call
9 each other "carnal." Did you hear them call each
10 other "carnal"?

11 Q. In the beginning of your testimony --

12 A. Right.

13 Q. -- you gave two terms.

14 A. Right.

15 Q. You said "carnals" and you said "homies."

16 A. Right. When two carnals are talking,
17 we'll say "the homies."

18 Q. I know. But let me ask a question,
19 because it makes it really hard on the court
20 reporter when we're both talking at the same time.

21 A. Maybe you should let me speak, then.

22 Q. Did you testify about the term "homies"?

23 A. Yes.

24 Q. Did you testify that that's a term that's
25 used in the Pen?

1 A. Between carnals, yes.

2 Q. Okay. Thank you.

3 Now, not everyone, when you were in the
4 pod with Esparza, was SNM; correct?

5 A. Yes.

6 Q. And the same thing with the other young
7 man?

8 A. Who?

9 Q. The man that you sodomized.

10 A. I was not an SNM member at that time.

11 Q. Okay. So every time that you've been in
12 different pods around the state of New Mexico,
13 everyone isn't SNM in one pod, right?

14 A. Depending if you're in a gang unit. If
15 you're suspected or validated, you're automatically
16 put into gang pods.

17 Q. And not everyone is -- I need you just to
18 answer "Yes" or "No." Is everyone in a pod always
19 SNM?

20 A. In just a pod in general?

21 Q. Yes.

22 A. I don't know. You'd have to go pod to pod
23 to find out.

24 Q. So you also testified that talking to
25 authorities, talking to the police or the COs, is an

1 automatic green light?

2 A. That's correct.

3 Q. Do you remember that?

4 A. Yes.

5 Q. And do you still stand by that testimony?

6 A. I stand by that testimony, yes.

7 Q. Okay. So is it fair to say that talking
8 to the police is basically an automatic kill?

9 A. Yes.

10 Q. Okay. And you typically get some sort of
11 paperwork on that?

12 A. It takes -- you know, there's got to be a
13 rumor, start with a rumor, and then you've got to
14 verify with the paperwork. Only you can order to
15 kill with paperwork.

16 Q. Okay. Now, disrespect.

17 A. Yes.

18 Q. What is disrespect?

19 A. Disrespect is anything that makes you look
20 bad in the light of your own organization, anything
21 that could make you feel weaker. Disrespect takes
22 everything from you in prison. If you're
23 disrespected, it strips you of everything, and
24 everyone will run over you, and your own people will
25 always use it against you. "Hey, you let that guy

1 fucking disrespect you. You're not going to move up
2 in status. You're pretty much making the SNM look
3 in a bad light."

4 Disrespect is -- it could be a variety of
5 things.

6 Q. So Esparza. He's the one that owed you
7 money?

8 A. Yes, ma'am.

9 Q. So Esparza was disrespecting you by not
10 paying you?

11 A. That's correct.

12 Q. Is there a way that you disrespected
13 Esparza?

14 A. No. I treated him very well until the
15 point I stabbed him. Yes, I gave him opportunities
16 to pay me.

17 Q. Okay. And how much money did he owe you?

18 A. 900.

19 Q. So depending upon the level of disrespect,
20 would it also depend on what their consequences are?

21 A. Depends on the individual and what he's
22 willing to do for that disrespect.

23 Q. Okay. So disrespect is not an automatic
24 kill?

25 A. It not an automatic kill, but you have to

1 buck up against it.

2 Q. Okay. So regarding disrespect, you could
3 also just rough him up a bit?

4 A. If you're outside the SNM, yes. But if
5 you want -- if you're within the SNM and someone
6 disrespects you, you want to go out of your way to
7 kill him.

8 Q. That's what you want, right?

9 A. With the SNM, yes.

10 Q. That's what you want?

11 A. As an SNM member, yes.

12 Q. So are you telling me that everyone who
13 has disrespected another SNM member is dead?

14 A. Well, you would have to find out how many
15 people disrespected, and then go search the state of
16 New Mexico for bodies.

17 Q. Okay. So that's your code, though.
18 Disrespect, you already testified, is not an
19 automatic green light?

20 A. It's not an automatic green light, no.

21 Q. Thank you.

22 So I have some questions about kind of
23 this dealer role that you had. You were dealing
24 drugs in prison?

25 A. At one point in time, yes.

1 Q. And the guy, Esparza, he wasn't a dealer,
2 right?

3 A. He was a user.

4 Q. He was a user. Is that what you call it
5 in jail, a "user"?

6 A. Yes.

7 Q. Not a "junkie"?

8 A. Yes.

9 Q. Addict?

10 A. You can call it whatever you want.

11 Q. Okay. What do people say in jail, or in
12 prison?

13 A. Well, you don't want to offend the guy and
14 call him a fucking junkie. That's disrespecting,
15 you know.

16 Q. You could get killed for that?

17 A. You can get killed. Yeah, if you
18 disrespect the wrong person and he's from another
19 organization, call him a "junkie," it can cause the
20 SNM and that organization to go to war over our
21 words, and you'll be in bad standing with the SNM.

22 Q. Right. But isn't it true that you could
23 call somebody a "junkie," and you might not get
24 killed for it?

25 A. No. That's disrespect, bad. You call

1 someone a "junkie," it's like selling your mom's
2 money, selling your mom for drugs. A junkie is bad.

3 Q. Was Esparza a junkie?

4 A. No. He was a user.

5 Q. Okay. So there must be a difference.

6 A. A user -- a junkie is someone that's going
7 to give pretty much everything in their room,
8 canteen, \$50 sack of canteen, and they're living
9 with nothing in their house. That's a junkie. A
10 junkie gives everything up for drugs.

11 A user will spend 20, 30 bucks here and
12 there, and come through with money, a larger amount
13 of money.

14 Q. Okay. But you weren't going to let this
15 user get away with owing you money, right?

16 A. No, I wasn't.

17 Q. And that's because you were the dealer,
18 and you were in charge, and he's not going to
19 disrespect you; correct?

20 A. Yes.

21 Q. And as a dealer, you're going to take
22 control of the situation, right? You're not going
23 to let this go on?

24 A. No, because the next person is not going
25 to pay me.

1 Q. Okay. So it's important that you take
2 charge and you set an example?

3 A. Set an example; they know not to mess with
4 me or the SNM.

5 Q. Right. And if they are going to get drugs
6 from you, they better pay you, right?

7 A. Yes.

8 Q. And you do not want the word to get out
9 that some user is in control, and they can just
10 decide when they're going to pay you, right?

11 A. That's correct.

12 Q. So what happens if a user needs a fix?

13 A. If a user need a fix?

14 Q. Um-hum.

15 A. In prison?

16 Q. That's correct.

17 A. How much money has he ran up?

18 Q. I don't know.

19 A. Well, I can't answer.

20 Q. I don't know what happens. Do they go
21 into withdrawal?

22 A. They go into withdrawal.

23 MR. CASTLE: Objection; relevance.

24 THE COURT: What's the relevancy of this,
25 Ms. Torraco?

1 MS. TORRACO: I can tie it up in just a
2 second. Could I have a moment, since we're at a
3 breaking point?

4 THE COURT: You may.

5 MS. TORRACO: If I could ask a few more
6 questions, Your Honor, this has to do with the fact
7 that what my client, Andrew Gallegos, is accused of
8 involved a dealer and a user relationship. And so
9 I'd like to tie up the relevancy with a couple more
10 questions.

11 THE COURT: Well, try me. Let me see.

12 MS. TORRACO: Okay.

13 BY MS. TORRACO:

14 Q. I'm going to say the question, and you do
15 not answer just yet.

16 I'd like to know if the user actually
17 needs the drug dealer?

18 THE COURT: Go ahead.

19 MS. ARMIJO: Your Honor, I'm going to
20 object. He wasn't allowed, on direct examination,
21 to testify as to anything on the streets. And if
22 this is the basis for it, I know that one of these
23 defense attorneys may have been --

24 MS. TORRACO: Can we approach?

25 THE COURT: Well, I think the question is

1 generic. It's not necessarily tied to the streets.
2 The charges Mr. Gallegos, Andrew, faces may be on
3 the streets, but I don't think the question is tied
4 to the streets. It's overruled.

5 BY MS. TORRACO:

6 Q. Okay. Mr. Rodriguez, isn't it true that
7 the user needs the dealer?

8 A. The user needs the dealer?

9 Q. Correct.

10 A. It depends. There is plenty of dealers.
11 You don't need just one in particular dealer.

12 Q. So there are other dealer?

13 A. Probably other dealers, yes. Am I in
14 prison, or am I on the streets?

15 Q. Where have you been?

16 A. In prison.

17 Q. Let's talk about in prison.

18 A. Then if you're a user, and if there's a
19 lot of things that are going in play: How much
20 money do you owe? What you got? If you owe money,
21 what can you give me now?

22 It's a lot of -- it's a complicated
23 situation.

24 Q. But the point is that if the user wants a
25 fix, he needs his dealer; isn't that true?

1 A. No, not necessarily.

2 Q. What? He's going to go into withdrawals?

3 A. In prison?

4 Q. Yes.

5 A. Yeah, he's going to go through
6 withdrawals.

7 Q. So if he wants -- what did you sell?
8 Heroin?

9 A. Yeah, heroin, cocaine, marijuana.

10 Q. So if he wants heroin and you're the only
11 dealer in the pod, it's stupid for him to cross you,
12 correct?

13 A. He's probably already crossed me if he has
14 to come and ask me.

15 Q. "Yes" or "No"? Is it stupid for him to
16 cross you?

17 A. No.

18 Q. It's not stupid?

19 A. It depends.

20 Q. Are you doing this because Ms. Armijo
21 objected to this line of questioning?

22 A. I'm not on the streets. I can't tell you
23 about the streets. You're talking about prison?

24 Q. I'm not asking about the streets.

25 A. In prison, you're not always the one

1 that's hitting the drugs, so he doesn't necessarily
2 need me. So he can cross me, and then tomorrow
3 another guy will hit, and he'll go buy drugs from
4 him. It's so inconsistent within prison, that you
5 don't need that person.

6 Q. Okay. You've answered the question.
7 Thank you.

8 MS. TORRACO: I have no further questions.

9 A. You don't want to ask me about my sexual
10 penetration charges?

11 THE COURT: Hold on. There is no question
12 pending here.

13 Does anyone have any questions? Mr.
14 Blackburn?

15 MR. BLACKBURN: May it please the Court.

16 THE COURT: Mr. Blackburn.

17 CROSS-EXAMINATION

18 BY MR. BLACKBURN:

19 Q. Good afternoon, Mr. Rodriguez. How are
20 you?

21 A. Good morning, Your Honor -- sir. I'm
22 appointing you judge already. I should call you
23 "carnal."

24 Q. Right. So let me ask you -- you testified
25 over the last couple of days about the fact that

1 you're only 33 now; is that correct?

2 A. That's right, sir.

3 Q. And how long have you been in custody?

4 A. Since I was 18.

5 Q. And prior to -- I think your testimony was
6 earlier that prior to the incidents that happened in
7 Silver City, in Grant County jail, you had a
8 juvenile past; is that correct?

9 A. Yes, I have a juvenile past.

10 Q. So when was the first time that you were
11 arrested?

12 A. Arrested?

13 Q. Yes. Or detained, I guess. As a
14 juvenile, you're not always arrested, but you were
15 detained or --

16 A. I can't recall. I was young.

17 Q. Twelve? Thirteen?

18 A. Probably around that age, yes.

19 Q. What was that offense for?

20 A. Twelve, 13. A probation violation, not
21 going to school, or firecrackers in a telephone.

22 Q. Okay. So at some point in time did you
23 ever go to like juvenile detention or a juvenile
24 facility for a lockup?

25 A. Yes.

1 Q. And what was that crime about? Do you
2 recall?

3 A. The first time?

4 Q. Sure. There is more than one, I take it,
5 right?

6 A. I went to Springer twice on the juvenile
7 lockup.

8 Q. So at the time that you had this juvenile
9 record, Springer was still available for people who
10 they wanted to send up to Springer, to like a
11 juvenile detention facility, right?

12 A. Yes.

13 Q. All right. So how many times did you go
14 up to Springer? Do you recall?

15 A. Twice.

16 Q. And do you remember what they sent you for
17 the first time?

18 A. I think the first time was pretty much a
19 lot of probation violations, not going to school.

20 Q. Okay.

21 A. Huffing spray paint, and just probation
22 violations.

23 Q. Snorting spray paint? Is that what you
24 said?

25 A. Huffing spray paint.

1 Q. All right. Huffing spray paint. Okay.
2 Was that a six-month commitment?

3 A. No, it was a one-year commitment.

4 Q. And then after that, you went back to
5 Silver City, and something happened, and you went
6 there a second time, right?

7 A. I got out, and I went back for a second
8 time, yes.

9 Q. What was the charges the second time? Do
10 you recall?

11 A. I think it was a burglary; larceny of a
12 Big O Tires; attempted bank robbery.

13 Q. Attempted bank robbery as a juvenile?

14 A. Yes. I was in a car when another man went
15 into a bank with a gun. And we were going to take
16 the money and kick him out of the car. We gave him
17 a pellet gun and a trash bag.

18 Q. Not too many banks to rob in Silver City,
19 is there?

20 A. Probably two. Right next to the police
21 station.

22 Q. That was real smart.

23 A. Yeah, that was real smart.

24 I can't recall exactly for -- what
25 everything is.

1 Q. Right.

2 A. Yeah.

3 Q. So then you went back to Springer, right?

4 A. And then Cabina Nuevo, yes.

5 Q. All right. Then since the age of 12,
6 let's say, if that's the first offense you recall as
7 a juvenile, what is the longest period of time
8 you've been out of custody?

9 A. Not very long.

10 Q. A couple of months here and there?

11 A. I think the longest time was nine months.

12 Q. And that was obviously prior to the time
13 that you got arrested for the aggravated battery; is
14 that correct?

15 A. It was in between the boys school. I got
16 out the same year and went back the same year.

17 Q. So between the two boys schools was the
18 time that you had the longest time out?

19 A. Yes.

20 Q. Basically, about 12 years of age, right?

21 A. Twelve, 13, somewhere around there.

22 Q. So when was it that you first entered --
23 were introduced to the gangs there in Silver City?

24 A. I grew up with the founding members of the
25 East Side Folk Gang. They were my childhood

1 friends.

2 Q. Anybody in your family had been in gangs
3 before?

4 A. No.

5 Q. Just you, right?

6 A. Just me.

7 Q. Did you get an education? Did you
8 complete school?

9 A. No.

10 Q. What was the highest grade you went to?

11 A. I think I got out of the boys school the
12 second time, and I started going to school. And I
13 think it was the tenth grade.

14 Q. All right.

15 A. Ninth or tenth grade.

16 Q. All right.

17 A. I got my GED incarcerated, though, while
18 incarcerated in prison.

19 Q. So when you're in prison, you're allowed
20 to take -- there are certain programs available to
21 you, are there not, like GED?

22 A. If you want to, yes.

23 Q. And you decided you wanted to, so you did
24 that, right?

25 A. Yeah.

1 Q. You got your GED?

2 A. A couple carnals were kind of making fun
3 of me. I didn't have a GED, so I went and got it.

4 Q. Did they offer other programs to you, like
5 anger management, stuff like that?

6 A. Yes, I did go -- I did --

7 Q. How many times did you do anger
8 management?

9 A. Quite a bit. I did some anger management.

10 Q. Did you pass or fail?

11 A. I passed.

12 Q. Wow.

13 A. Why? Do I seem angry to you?

14 Q. I'm just asking.

15 A. I used to have anger management, yeah.
16 But I think it was distorted from what it really
17 was. It was just me being a gang member, you know.

18 But, yeah, I went to substance abuse
19 courses. I went to anger management. The Pen
20 Project, which is where you write, and they send
21 your writing to a college, to give you advice. I've
22 done a lot of programming.

23 Q. Okay. All right. Well, you indicated
24 earlier that the crimes, obviously, that you
25 committed as a juvenile had nothing to do with SNM,

1 obviously, correct?

2 A. That's correct.

3 Q. The crimes that you committed, that you
4 got the convictions for when you were in Grant
5 County in Silver City, that was before you joined
6 the SNM; is that correct?

7 A. That's correct.

8 Q. And then the crimes that you committed
9 when you were over in Santa Rosa, as it relates to
10 the correctional officer, those are all before you
11 went to SNM, correct?

12 A. That's correct.

13 Q. So you had somewhat of a history from the
14 age of 12 to maybe 21, 22, before you ever had any
15 contact with SNM; is that correct?

16 A. Yes.

17 Q. And how old were you when you went to
18 Guadalupe, to Santa Rosa?

19 A. I was probably -- I was 20 when I went to
20 the North, so I'd just turned 20.

21 Q. All right. Well, let me ask you some
22 questions about the situation that was going on at
23 the Grant County facility. First of all, you were
24 in there because of an aggravated assault with a
25 deadly weapon? Is that what you said?

1 A. That was the arresting charge, yes.

2 Q. And who was the victim of that particular
3 case?

4 A. A guy named Nick Martinez.

5 Q. And who was Nick Martinez?

6 A. He was a 18th Streeter that was a
7 childhood friend.

8 Q. All right.

9 A. He was a brother to my East Side Folk Gang
10 members.

11 Q. And what caused the aggravated battery
12 with a deadly weapon? What was the deadly weapon?

13 A. It was a Bowie knife.

14 Q. And did you try and stab him?

15 A. I did stab him.

16 Q. Did he live?

17 A. Yeah, he lived. Yeah.

18 Q. So that's why it's not a murder charge,
19 right?

20 A. That's correct.

21 Q. And how long were you in custody before
22 the issue happened, before you were arrested --
23 well, that was what you were in jail for when the
24 issue happened with Mr. John Hardy, right?

25 A. Yes. I was in on that charge, yes.

1 Q. All right.

2 A. I think I had -- I was on OR for like a
3 burglary or larceny or something like that, and it
4 was -- but it wasn't on that arresting charge, yes.

5 Q. All right. So let me ask you some
6 questions about the allegations of what happened as
7 it relates to Mr. Hardy. Is that okay?

8 A. Yes.

9 Q. I know that you pled no contest to some
10 certain charges eventually, and you were sentenced
11 to a total of 18 years; is that correct?

12 A. That's correct.

13 Q. And that's because they ran about six
14 cases together, correct?

15 A. I think seven, because one was concurrence
16 not logged in there.

17 Q. So you had the kidnapping; the criminal
18 sexual penetration; the aggravated battery; the
19 issue concerning the escape; and then the issue
20 concerning something with the correctional officer
21 who disrespected your girlfriend; is that correct?

22 A. Yes. There's two of the sexual
23 penetrations, and I think there was an original 27
24 counts of allegations.

25 Q. Now, this guy, Mr. Hardy, he was some

1 White dude, right?

2 A. Yeah.

3 Q. How old was he?

4 A. I think he was 29.

5 Q. And did he have children?

6 A. I believe so.

7 Q. Did he have a family?

8 A. I couldn't tell you what his family
9 situation was, but --

10 Q. Did you know him at all from there in
11 Silver City?

12 A. No. I never met him before.

13 Q. The first time you met him was whenever
14 you became incarcerated?

15 A. Yes.

16 Q. So let me ask you about some of these
17 things that were alleged in this particular case.
18 Who was Raymond Randolph? He was in custody with
19 you; is that correct?

20 A. He was an individual in the cell that
21 night.

22 Q. Did you know him from any gang
23 affiliation?

24 A. No, I didn't.

25 Q. So did you and Raymond Randolph whip

1 Mr. Hardy with a towel?

2 A. It was a sheet. I had a sheet, and I
3 whipped him a couple of times, yes.

4 Q. Like get a wet sheet, and flip it, and hit
5 him real hard?

6 A. Yes, sir.

7 Q. And like pop it?

8 A. Yes, sir.

9 Q. And did you ask him to stand with his legs
10 spread so that you could hit him in his crack, in
11 his private parts?

12 A. I think that was Raymond Randolph. But I
13 was there when it happened, yes.

14 Q. That was Raymond Randolph, but you were
15 there when that happened, right?

16 A. Yes.

17 Q. At any point in time did you take a razor
18 blade and put it to his throat?

19 A. When I initially moved him from the cell,
20 when we found the money, yes.

21 Q. So you moved him from one cell to another
22 cell; is that correct?

23 A. We were about to roll him out. They found
24 a receipt. Raymond Randolph brought it to me. And
25 I told him he was going to move to this cell and we

1 were going to use his money. And he complained, and
2 I grabbed him by the hair and put the razor blade to
3 his neck, and told him that he was going to stay in
4 that cell until we used his money, and then he could
5 leave.

6 Q. So you mentioned to one of the other
7 defense counsel just recently that there was some
8 disrespect from him to you because of something to
9 do with getting a haircut?

10 A. That was the night before.

11 Q. That happened first, right?

12 A. That happened first, before we were going
13 to roll him out, yes.

14 Q. Then all the stuff with the towels and
15 sheet?

16 A. Right. It led up to the sodomy, yes.

17 Q. And when you put the razor blade to his
18 throat, you told him that if he said anything, he
19 would get hurt; is that correct?

20 A. That's correct.

21 Q. And the blade was out of a shaver; is that
22 right?

23 A. That or a razor, yes.

24 Q. And you told him that he better not say
25 anything or try to get into protective custody; is

1 that right?

2 A. Yes.

3 Q. When you moved him from the one cell to
4 the other cell, obviously that was something that
5 the detention facility did not authorize?

6 A. No, it did not.

7 Q. But they didn't say anything about it,
8 right?

9 A. No.

10 Q. At any point in time? All right.

11 A. They attempted to at one point in time.

12 Q. So also you kept a close eye on him so he
13 wouldn't try and get ahold of the guards while you
14 were there, right?

15 A. Not myself, but another inmate did, yes.

16 Q. And then you started doing what was known
17 as California knock-outs on him, did you not?

18 A. That's correct.

19 Q. Can you explain what a California
20 knock-out is?

21 A. You have an individual breathe hard, about
22 10 to 15 breaths. You have him cross his chest, and
23 you put pressure on his chest until he's knocked
24 unconscious.

25 Q. So you guys did that about 15 times, did

1 you not?

2 A. As a group?

3 Q. Yes, as a group.

4 A. Yes, sir.

5 Q. And you did between five or six of those;
6 is that right?

7 A. Around there.

8 Q. And did you make him drink a cup of urine?

9 A. No, myself, I didn't. But I was present
10 during that.

11 Q. Did you tell him -- was he told if he
12 didn't drink the cup of urine, that he would be hit
13 some more?

14 A. I don't remember if I told him that, but
15 it was said.

16 Q. Is it just you and Mr. Randolph? Are you
17 the only two that were involved in doing this?

18 A. No, sir.

19 Q. How many people were in there?

20 A. There was myself, Jason Lucero, Raymond
21 Randolph, Joseph Chavez, and I believe John Hardy.
22 There was five of us locked in a cell, yes.

23 Q. So --

24 A. There was a lot of people adding each
25 other on to continue to assault him, and it was like

1 a -- it was a group assault on him.

2 Q. All right. At any point in time, did you
3 hand him a piece of paper that contained Comet or
4 Ajax and make him inhale it through his nose?

5 A. Yes, I did.

6 Q. Were you present whenever the hot sauce,
7 or the bottle that was filled with hot sauce, with
8 water and jalapeno juice, was stuck up his butt?

9 A. I had my back turned to it. But I was in
10 the cell, yes.

11 Q. You knew it was happening?

12 A. I knew it was going to happen, yeah.

13 Q. You knew what was going to happen, right?

14 A. Yeah. Someone threw the hot sauce bottle
15 on the tier and suggested that we shove it in his
16 ass. And it happened.

17 Q. You guys were laughing about it, weren't
18 you?

19 A. Yes.

20 Q. Were you there whenever the lotion bottles
21 were also done in the same manner to him?

22 A. I think it was just once. But yeah.
23 Another individual told him, "Why don't you put this
24 in your ass?" And he did it.

25 Q. He didn't do this voluntarily, did he?

1 A. He was scared for his life.

2 Q. Were you the one that put hair wax around
3 the lotion bottle so it could be easier to insert it
4 into his ass?

5 A. No. That was Jason Lucero.

6 Q. But you were there, right?

7 A. I was present, yes.

8 Q. Who made him bend over the bunk, so that
9 all four subjects could participate in spreading
10 toothpaste around his rectum, and then forcing him
11 to eat it with a spoon?

12 A. Yeah, I wasn't there for that.

13 Q. You weren't there for that one?

14 A. No. I was in my other cell. I came
15 later, about maybe three hours later, after he was
16 already in there. I know it happened, though. Yes,
17 it did happen.

18 Q. You knew that it happened?

19 A. Yes, it did. They were yelling on the
20 tier that it happened.

21 Q. They were laughing?

22 A. They were laughing about it, yes.

23 Q. And did everybody take turns spitting in
24 his face on occasions?

25 A. Being what happened, it probably happened.

1 Q. All right.

2 A. Being what was going on, yes.

3 Q. Did you -- when you stuck the razor to his
4 neck, did you get information as to where he lived?

5 A. No. This was -- the day I did that was
6 the first day that we moved him from one cell to the
7 next. It was seven days away from that incident in
8 that cell.

9 Q. So how many days was he actually -- about
10 a week? This happened for over a week, right?

11 A. It was about maybe five to seven days.

12 Q. This 29-year-old guy was pretty much
13 tortured for seven days, right?

14 A. Yes.

15 Q. You made him tell you his kids' names and
16 where he lived, so that that way you would have that
17 information so that he wouldn't try and rat you guys
18 out, right?

19 A. I don't remember if it was the names of
20 them, but I think it was -- it might have been. But
21 I know I got the address, yeah.

22 Q. Did you hit him in the head with a book?

23 A. Yes.

24 Q. Now, there was another guy in there also,
25 Anthony Olguin?

1 A. Yes. Those were false allegations with
2 him.

3 Q. Okay.

4 A. He admitted that he was lying to the
5 detective.

6 Q. Okay. He made basically the same type of
7 allegations against you guys, did he not?

8 A. He made similar allegations, yes.

9 Q. His were a little more graphic, were they
10 not?

11 A. Yeah. It was bullshit, yeah.

12 Q. But he came forward and said those didn't
13 happen; but Mr. Hardy came forward and said they did
14 happen as it related to him, right?

15 A. It did happen to John Hardy.

16 Q. All right. And as a result of that -- we
17 went through this -- you got 18 years, right?

18 A. That's correct, sir.

19 Q. So when you went to -- you next went to
20 Hobbs; is that correct?

21 A. From RDC?

22 Q. You went from RDC to Hobbs, right?

23 A. Yes.

24 Q. And from Hobbs to Guadalupe?

25 A. Santa Rosa, yes.

1 Q. Santa Rosa?

2 A. Yes.

3 Q. And let me back up. As it relates to your
4 judgment and sentence that Mr. Sindel was showing to
5 you earlier, there was nothing in your judgment and
6 sentence that indicates that you have to register as
7 a sex offender, is there?

8 A. There is not, no.

9 Q. And that was an issue that concerns you or
10 you were concerned about, because they were telling
11 you -- somebody was telling you that you had to
12 register as a sex offender, right?

13 A. After I took the plea, a guard had
14 mentioned it. And it wasn't in my plea deal, so I
15 didn't think it was -- and plus, I didn't view it as
16 a sexual offense. When you see a sexual offense,
17 you think it's a woman or a child. So I didn't feel
18 that it was necessary.

19 But when I started reading the law, it
20 doesn't discriminate against what the crime -- the
21 nature of the crime.

22 Q. When you eventually read the law, you
23 found out that anything involving criminal sexual
24 penetration in certain matters --

25 A. Right.

1 Q. -- makes you, whether it's male-to-male or
2 male-to-female or other situations, there were
3 certain crimes in New Mexico that you have to
4 register as a sex offender?

5 A. That's correct, sir.

6 Q. And you found out after the fact?

7 A. I found out after the fact.

8 Q. And so that's why you were filing a bunch
9 of habeases; is that right?

10 A. Yes. When I really started paying
11 attention to the law --

12 MR. CASTLE: Your Honor, with all due
13 respect to Mr. Blackburn, this area has already been
14 gone over, and I'd object on asked and answered.

15 THE COURT: It does seem like we've been
16 over this. New areas?

17 MR. SINDEL: I join in that objection,
18 Your Honor.

19 THE COURT: Can you kind of keep it to
20 newer areas?

21 MR. BLACKBURN: I will, Your Honor. Next
22 time, I'll go first.

23 THE WITNESS: Tell them.

24 MR. BLACKBURN: Next time, I'll go first.

25

1 BY MR. BLACKBURN:

2 Q. When you -- well, in the first habeas --
3 you filed a habeas, and you said you filed three
4 habeases?

5 A. That's correct.

6 Q. And in the first habeas, you recognized
7 that you wanted your plea to be withdrawn so that
8 you wouldn't have to register; is that correct?

9 A. I wanted it withdrawn so I can go back to
10 the judicial system and either fight my charges, or
11 maybe get them dismissed based on lack of evidence.
12 But I was looking for a retrial, to go back into the
13 original counts of the case.

14 Q. And of all the three habeases that you
15 filed as it relates to that particular situation,
16 all three of them were eventually denied; is that
17 correct?

18 A. Yes.

19 Q. And on the first two habeases, you never
20 admitted to doing any of the acts as set forth to
21 what you pled guilty to; is that correct?

22 A. I never admitted to any of the acts. I
23 just fought the ineffective assistance of counsel,
24 based on my lawyer was going to get me married, and
25 that my lawyer never notified me of SORNA, the

1 Sexual Offender Registration Notification Act.

2 Q. When you filed your third habeas, in 2013,
3 you admitted that you participated in some of those
4 acts, did you not?

5 A. My co-defendant, Joseph Chavez, Anthony
6 Olguin, were willing to go testify on my behalf.
7 And I said, "I'll admit to the crimes I committed,
8 my co-defendant is going to go admit to the crimes
9 he committed. And you can prosecute me on the
10 crimes that I admit to."

11 I was taking responsibility for my acts,
12 according to the charges I was given.

13 Q. Do you know why Mr. Hardy was
14 incarcerated? What was he in custody for?

15 A. I think it was a DWI. And then later on,
16 after the fact, there was allegations that he was
17 messing with a younger lady, a younger girl.

18 Q. But he was initially in custody on a DWI,
19 right?

20 A. Yes. Those are the ones -- we never
21 verified that, that he was dating a 16-year-old.

22 Q. So what was the date when you first got
23 to -- let me back up -- when you had that incident
24 concerning the guard over in Santa Rosa?

25 A. Right.

1 Q. Where you hit him with the Coke can; is
2 that right?

3 A. That's correct.

4 Q. You were then sent to the North facility;
5 is that correct?

6 A. Yes.

7 Q. So straight from there, because it was a
8 Level 6; is that right?

9 A. Yes.

10 Q. And you knew some people that were there
11 at the time, did you not?

12 A. Yes.

13 Q. And who was that?

14 A. Tommy Valdez, Conejo, or they called him
15 Baby Rabbs; and a guy named Joseph Sufuentes, named
16 Snorty. I think that there might have been -- I
17 don't know if Mario Montoya was there at the time.
18 But there might have been maybe two other
19 individuals.

20 Q. But when you first initially got there to
21 the North facility, eventually you were put in, not
22 only -- initially, you were with some SNM members,
23 but that changed, did it not?

24 A. No. I always lived around at least one or
25 two of them.

1 Q. Okay. Did you later get transferred to
2 some pod?

3 A. X pod.

4 Q. Did you get transferred to a pod where Los
5 Carnales was in?

6 A. There was three Los Carnales in X pod.

7 Q. Okay.

8 A. Let me see. There was Robert Young,
9 Alfonso Garcia, and another one. I don't remember.

10 Q. Okay. So at some point in time, you were
11 approached by some -- you were -- at some point in
12 time, you ran into some people walking around the
13 yard that include -- some of those include Arturo
14 Garcia; is that correct?

15 A. At some point in time, yes.

16 Q. But there was no discussion at that point
17 in time about joining the gang? That came from
18 somebody else; is that correct?

19 A. No. The very first time -- oh, you're
20 talking about when the neutral vatos asked me if I
21 was going to become an SNM member?

22 Q. Yes.

23 A. Yes, there was a point in time where some
24 neutral people came up to me and asked me, "Are you
25 going to click up? Are you going to be an SNM

1 member?" I told him, "No." And he goes, "Well, we
2 heard them talking that they were going to recruit
3 you."

4 They never brought that to my attention at
5 that time, no.

6 Q. At the time that you finally had a couple
7 of connections or eye-to-eye with Arturo Garcia, at
8 some point in time he had a conversation with you
9 about hooking up to the SNMs; is that correct?

10 A. The very first time I met him, he asked me
11 if I wanted to be down with the S.

12 Q. And that was short and sweet, right?

13 A. Short and sweet, to the point that I just
14 went along, continued walking the square.

15 Q. And eventually, whenever you decided that
16 you were going to join the SNMs, he provided you
17 with a -- we talked about this thick type of books
18 or documents that he gave to you; is that right?

19 A. It was a manila envelope with copies of
20 certain books and excerpts out of books. And he
21 sent it to the CO, yes.

22 Q. Okay. Let me go to the situation now, the
23 situation as it relates to Robert Esparza; is that
24 correct? Do you remember that?

25 A. The video.

1 Q. Yeah.

2 A. Yes, sir.

3 Q. And that dealt with the \$900; is that
4 correct?

5 A. Yes.

6 Q. And you've already discussed this
7 previously, but you indicated that that situation
8 was personal; isn't that right?

9 A. Yes.

10 Q. So let me move on to the next particular
11 one. The situation that happened with Chulo, that
12 started in 2005, did it not?

13 A. It started before my arrival at the PNM
14 North facility.

15 Q. And then it continued to escalate up until
16 2011; is that correct?

17 A. There was attempts on his life, on the
18 streets, and it continued to turn to a full-blown
19 try to kill him on sight.

20 Q. At some point in time -- you've gone
21 through your history. At some point in time, you
22 were charged with these crimes as it relates to the
23 Javier Molina case and to Chulo; is that correct?

24 A. Yes.

25 Q. And that was on December 3rd, correct, of

1 2015? Right?

2 A. Yes.

3 Q. But prior to that, you were charged -- I
4 think you talked about you were charged in state
5 court for the deal with Javier Molina; is that
6 correct?

7 A. Yes.

8 Q. But you were only charged with tampering
9 with evidence and things like that, right?

10 A. They were about to amend the charge to
11 first degree murder.

12 Q. But you had gotten quite a bit of
13 discovery in that particular case, because that case
14 was on a path to go to trial, was it not?

15 A. Yes.

16 Q. And shortly before that case was getting
17 ready to go to trial, before they were going to
18 amend the indictment, is when the feds came in and
19 took that over, did they not?

20 A. Yes.

21 Q. So then you got picked up on the federal
22 case, because -- and then you got charged with first
23 degree murder, correct?

24 A. On the federal case?

25 Q. On the federal case, yes.

1 A. Yes, sir.

2 Q. All right. When you first came into the
3 SNM Gang, Arturo Garcia basically told you he wanted
4 you to lay low; is that correct?

5 A. Yes.

6 Q. Because at the time, you were a Level 6,
7 right?

8 A. Yes.

9 Q. And he wanted you to lay low so that --
10 because you were so young, obviously, that you could
11 move your way down to a Level 3, right?

12 A. It had nothing to do with age.

13 Q. He wanted you to stay, he wanted you to
14 get down -- he didn't want you to be in a Level 6.
15 He wanted you to be able to go down to the Level 3;
16 is that correct?

17 A. Progress through the program back to a
18 Level 3, yes.

19 Q. To get back to where you were in a
20 facility where you weren't locked down 24/7,
21 correct?

22 A. Correct.

23 Q. Eventually, while you were in custody, you
24 were, on this particular case, you were housed with
25 a bunch of individuals in Otero County, right?

1 A. In Chaparral?

2 Q. Chaparral. Right?

3 A. Yes.

4 Q. And one of those was Mr. Garcia; was that
5 correct?

6 A. Eventually he showed up there, yes.

7 Q. And at some point in time, you said you
8 had conversation with him about the situation -- a
9 situation that was going on as it relates to Sammy
10 Chavez, correct?

11 A. I think they admitted him onto the RICO,
12 and one of the overt acts was the Sammy Chavez
13 murder.

14 Q. And you testified this morning that while
15 he was at Otero County, that you guys could talk
16 through the cell walls; is that correct?

17 A. No, just through those three cells. The
18 cement wasn't set. And the cell I was in, it was
19 the right back window.

20 Q. All right.

21 A. The back wall.

22 Q. And you had a conversation with him about
23 those new charges, is that correct?

24 A. Right.

25 Q. And he told you that he didn't -- he

1 expressed his confidence in that, that he would be
2 cleared of any wrongdoing; is that correct?

3 A. I think it was Churro's confidence, his
4 confidence in Churro that would be not found guilty
5 on that.

6 Q. Did you admit that -- did you state that
7 Garcia expressed his confidence that he would be
8 cleared of wrongdoing in the murder because of
9 problems with the case?

10 A. I don't think those were my exact words,
11 but that's around the frame, that he felt the
12 Government had fucked up too much and that they had
13 the ace in the pocket, was Churro was in jail when
14 they found the body.

15 MR. CASTLE: May I ask for clarification,
16 which Garcia it is, so we can ask him?

17 BY MR. BLACKBURN:

18 Q. How about Arturo Garcia?

19 A. Arturo Garcia.

20 Q. I think that's what you said.

21 A. Yeah, I did.

22 Q. You never said Billy Garcia?

23 A. No. I never called Arturo by his last
24 name.

25 Q. How long were you in custody with

1 Mr. Arturo Garcia?

2 A. At that time?

3 Q. Yes.

4 A. I wouldn't be able to say. Months.

5 Whenever -- well, you should know. They sent him
6 from Estancia, over there; and then he stayed there
7 for about three months; and then they sent him back
8 to Estancia; and then they shot him back to
9 Chaparral. They were playing ping pong with him.
10 Eventually, he showed up and stayed there until the
11 remainder that I left.

12 Q. Let me ask you this: The entire time that
13 you were with Mr. Garcia, Arturo Garcia, in Santa Fe
14 or any other facility, or even when you were at
15 Chaparral, you had a lot of time to talk to him,
16 correct?

17 A. Yes.

18 Q. And is it safe to say that you never saw
19 him assault anybody; is that correct?

20 A. I never seen Arturo put his hands on
21 anybody.

22 Q. And you also know -- it is also true, is
23 it not, Mr. Rodriguez, that the only information
24 that you know about any of the crimes charged in the
25 2007 murder that he's charged with, is what you read

1 on the tablets; is that correct?

2 A. That's correct.

3 Q. Okay.

4 A. I never asked no questions about any of
5 those cases.

6 MR. BLACKBURN: I have nothing further.

7 THE COURT: Thank you, Mr. Blackburn.

8 Anyone else on cross?

9 Ms. Armijo, do you have redirect of Mr.
10 Rodriguez?

11 REDIRECT EXAMINATION

12 BY MS. ARMIJO:

13 Q. What was Mr. Arturo Garcia's position as
14 you've known him in the SNM?

15 A. He was the driving force on the tabla. He
16 was a leader, SNM leader.

17 Q. Do SNM leaders, per se, commit acts of
18 violence, or do they ask others to commit acts of
19 violence?

20 A. They usually don't get their hands dirty.
21 I think the only tabla member that ever really got
22 his hands dirty in my time within the SNM was Baby
23 Robert.

24 Q. You were asked by Mr. Castle about going
25 to trial, and then changing your mind and deciding

1 to cooperate with the United States. What
2 significance did going to trial have on your
3 decision to cooperate?

4 A. Who is Mr. Castle? Which one is Mr.
5 Castle? You. Okay.

6 Q. Billy Garcia's attorney, Mr. Castle.

7 A. What significance did it have, my plea?

8 Q. Yes. He was asking you questions in
9 reference to that you had decided that you were
10 going to trial alone, and the only person, going
11 alone to trial. And I guess my question to you is
12 --

13 A. Right.

14 Q. -- did that have any significance on
15 whether or not you decided to cooperate?

16 A. Yes.

17 Q. And how so?

18 A. Because I was being used as -- I think
19 some mentioned it earlier -- a torpedo for the
20 Government to expose their hands on how they were
21 going prove who are SNM members; how they're going
22 to prove the VICAR in furtherance of the
23 organization. It was pretty much to see --

24 MR. SINDEL: Your Honor, I'm going to
25 object unless there is some foundation. We don't

1 know -- if this is his thought process, that's one
2 thing, but he's making as if other people had
3 actually decided this.

4 THE COURT: Well, bring the question in
5 terms of what his thought process was in deciding to
6 plead, and not in what other people were thinking.

7 MS. ARMIJO: Yes, Your Honor.

8 BY MS. ARMIJO:

9 Q. And, Mr. Rodriguez, I'm asking you what
10 your thought process was.

11 A. My thought process was that people who
12 claimed they were going to go to trial with me,
13 saying that whoever takes a plea is going to get
14 green lit, whoever takes a plea is going to get a
15 hit --

16 MR. CASTLE: Objection; hearsay. I think
17 that's about people that aren't in this room.

18 THE COURT: Well, I'm just not sure where
19 this is coming from. So I'm going to have to
20 sustain. It's just hard to tell where it's coming
21 from.

22 BY MS. ARMIJO:

23 Q. Well, you were asked specifically about
24 going to trial and standing alone. Do you recall
25 that, by Mr. Castle?

1 A. Yes. I was the last one standing.

2 Q. Yes. And did you make a decision to
3 cooperate during that time that you were the last
4 one standing?

5 A. It wasn't right away. It was after the
6 court ended. And I sat down to try to resolve a
7 group plea on the VICAR, based on some permission by
8 some tabla members. And I just said --

9 MR. CASTLE: Your Honor --

10 THE COURT: Why don't you do this: Why
11 don't you do this: Ask him leading questions.

12 MS. ARMIJO: Thank you.

13 THE COURT: So that he doesn't -- if the
14 defendants object, we can go from there.

15 MS. ARMIJO: All right.

16 THE COURT: But try to ask him leading, so
17 you can see what --

18 BY MS. ARMIJO:

19 Q. You mentioned the term -- let me ask you
20 this question: You mentioned the term "torpedo"
21 before, and I believe you were asked by defense
22 counsel about the term "torpedo"?

23 A. Right.

24 Q. What is your understanding, within the
25 SNM, of what a torpedo is?

1 A. You send someone in there to sacrifice
2 himself. And in my case, I would have pretty much
3 been earning a stripe for the SNM by sacrificing
4 myself.

5 Q. Well, hold on.

6 MR. CASTLE: Approach the bench?

7 THE COURT: Hold on. Just the definition
8 of "torpedo."

9 THE WITNESS: Okay.

10 THE COURT: That's it. He answered that.
11 Next question.

12 BY MS. ARMIJO:

13 Q. And this is just "Yes" or No."

14 A. Okay.

15 Q. Did you feel you were being --

16 THE COURT: Try right now to just answer
17 the question, and not volunteer any information.

18 THE WITNESS: Okay.

19 THE COURT: All right. Ms. Armijo.

20 MR. CASTLE: Your Honor, could we approach
21 the bench? I have a concern I'd like to bring to
22 the Court's attention.

23 THE COURT: All right.

24 (The following proceedings were held at
25 the bench.)

1 MR. CASTLE: Your Honor, this defendant
2 was charged in a separate indictment from all these
3 men. He's now blurted out that there was some kind
4 of joint plea, which we have never been part of,
5 that anybody else has been part of. He's talking
6 about some members of a tabla. He hasn't identified
7 any of these defendants as being part of that
8 discussion.

9 I think we're going into, possibly, plea
10 negotiations, which are not admissible under the
11 rules. We're also --

12 THE COURT: I'm trying to shut it down. I
13 don't know what he's going to do.

14 MR. CASTLE: What he's going to do --

15 THE COURT: Let me see if I can control
16 it. I'm doing the best I can.

17 MR. CASTLE: The reason he was set first
18 is, he didn't waive speedy trial. If we talk about
19 his attorney -- it's irrelevant.

20 THE COURT: What do you want me to do? It
21 was your question that she's following up on, so I
22 don't think I can say it's irrelevant.

23 MR. CASTLE: I didn't get into --

24 THE COURT: You can't go into why he pled
25 guilty, why he changed all this stuff.

1 MR. CASTLE: It was set for trial.

2 THE COURT: Okay. Well, I'm doing the
3 best I can. I'm trying to control it. I'm talking
4 to him, talking to Ms. Armijo. I'm trying to
5 control the situation. But given that you opened it
6 up, I don't think I can say it's irrelevant.

7 MR. CASTLE: It has to be admissible under
8 the Rules of Evidence, whether it's relevant or not.
9 The Court can decide it's relevant statements that
10 some people have made to him. Saying we want him to
11 go in and be a torpedo, that is still hearsay. I
12 don't know how to get around the rule by saying,
13 when it's based on hearsay.

14 THE COURT: The only question that was
15 asked is, "What is a torpedo?" He's answered that.

16 MR. CASTLE: And I think the next question
17 is, "Were you sent in to be a torpedo by other
18 defendants?"

19 That's hearsay.

20 THE COURT: No, it's not. It's an order.
21 That's not a hearsay. So I don't know if that's the
22 question that's going to be asked. But an order is
23 not hearsay.

24 MR. CASTLE: I think it is. It's an
25 affirmative conduct. That's communicative. That's

1 the definition of --

2 THE COURT: It's not conduct. Well, it's
3 conduct, but it's an order. Is that your next
4 question?

5 MS. ARMIJO: Yes, but I was going to ask
6 him, just "Yes" or "No."

7 MR. SINDEL: Why -- I mean, I can
8 understand if he believes he's a torpedo. But I
9 think it's totally different if someone is telling
10 him he's a torpedo.

11 THE COURT: I don't know if he's been told
12 he's a torpedo.

13 MR. SINDEL: Maybe I misunderstood in the
14 back.

15 THE COURT: Why don't you ask him is that
16 his belief; he wasn't told that.

17 MS. ARMIJO: I think the answer would be,
18 he was told that. But I'm asking him if it was his
19 belief that he was, and not getting into the basis
20 of it.

21 THE COURT: Let's clear that up.

22 (The following proceedings were held in
23 open court.)

24 THE COURT: All right. Ms. Armijo.
25 Just answer Ms. Armijo's questions.

1 THE WITNESS: "Yes" or "No"?

2 THE COURT: Don't try to volunteer any
3 information. If she wants it, she'll elicit it from
4 you.

5 THE WITNESS: Okay.

6 BY MS. ARMIJO:

7 Q. Mr. Rodriguez, was it your belief that by
8 going to trial in the other case, the one that was
9 United States versus Varela, et al., the one that we
10 were talking about you and three other people, was
11 it your belief that by going to trial by yourself,
12 that you were going to be a torpedo?

13 A. Yes, ma'am.

14 Q. Now, you mentioned, when you were being
15 asked questions by Mr. Castle, and he was talking to
16 you about hits right now with rival gang members,
17 and that, you mentioned that all hits were called
18 off in Estancia. Do you recall that?

19 A. Yes.

20 Q. What time period are we talking about?

21 A. We're talking about while the carnals were
22 out in Estancia on tier time and pretty much all
23 together.

24 Q. And are you referring to while pending
25 this case?

1 A. Pending this case, yes.

2 Q. And you mentioned something about heat.

3 What did you mean by that?

4 THE COURT: Why don't we do this: Let's
5 take this up after the break.

6 MS. ARMIJO: Thank you, Your Honor.

7 THE COURT: All right. We'll be in recess
8 for about 15 minutes.

9 (The jury left the courtroom.)

10 THE COURT: All right. We'll be in recess
11 for about 15 minutes.

12 (The Court stood in recess.)

13 THE COURT: Looks like we've got all the
14 defendants and lawyers.

15 I do have now the packages from Probation.
16 I think there are only four that have not been
17 disclosed. So that's what they're telling me. So
18 either there is nothing, or there is only four. But
19 I only got four packages to review.

20 Anything to discuss? All right.

21 All rise.

22 (The jury entered the courtroom.)

23 THE COURT: All right. Mr. Rodriguez,
24 I'll remind you that you're still under oath.

25 THE WITNESS: Yes, sir.

1 THE COURT: Ms. Armijo, if you wish to
2 continue your redirect of Mr. Rodriguez, you may do
3 so at this time.

4 MS. ARMIJO: Thank you, Your Honor.

5 THE COURT: Ms. Armijo.

6 BY MS. ARMIJO:

7 Q. Mr. Rodriguez, in the Molina murder, the
8 Javier Molina murder --

9 A. Yes, ma'am.

10 Q. -- was Jerry Montoya being used as a
11 torpedo?

12 A. Pretty much, yes.

13 Q. And was that because there was actually a
14 hit out on him, as well?

15 A. There was accusations that he had
16 paperwork on him.

17 Q. And so you were asked questions about
18 Special Agent Acee's questionnaire. Do you recall
19 those questions?

20 A. Yes.

21 Q. Do you know if you were actually even
22 asked all of the questions on the questionnaire?

23 A. I think there was like 100-some questions.
24 I don't think I've ever seen that. It has my name
25 on it and everything, but I don't think I've ever

1 seen that.

2 Q. So it wasn't given to you, and you were
3 not asked to fill it out?

4 A. Oh, myself fill it out?

5 Q. Yeah.

6 A. No, I was never -- no.

7 Q. Okay. And I believe right before break we
8 were talking a little bit about, you had talked
9 about that the hits were called off, and you had
10 mentioned to take the heat off. What does that
11 mean?

12 A. Well, they were trying to beat the cases,
13 so they didn't want added murders or added stabbings
14 to bring more charges against the defendants.

15 Q. So was it your understanding that there
16 were not to be any -- any actions done by the SNM,
17 right, as far as the people facing federal charges,
18 to not bring additional heat, as you say?

19 A. Yes, ma'am.

20 Q. Why did you want witness protection?

21 A. Because my life is in danger.

22 Q. And why is your life in danger?

23 A. Because I left the SNM and I'm cooperating
24 with the Government. I'm sitting here in this
25 chair.

1 Q. You were asked by Mr. Granberg about
2 statements that his client made to you when you were
3 together, a conversation that you had. Do you
4 recall that?

5 A. Who is Mr. Brandon?

6 Q. Oh, Mr. Granberg. I'm sorry. Mr.
7 Granberg represents Chris Garcia.

8 A. Okay. Yes.

9 Q. Or Christopher Chavez. I'm sorry. There
10 is a Christopher Garcia in this case, is there not?
11 Not here, but is there an SNM member named
12 Christopher Garcia?

13 A. Are we talking about Christopher Chavez?

14 Q. Yes.

15 A. Okay. Yes, there is a defendant named
16 Christopher Garcia.

17 Q. Okay. But just so we're clear, I'm
18 talking about Christopher Chavez. His attorney was
19 asking questions about a conversation that you had
20 with him.

21 A. Right.

22 Q. And you mentioned a person by the name of
23 Boo-Boo. Who is Boo-Boo?

24 A. Robert Lovato, Junior.

25 Q. And is he an SNM Gang member?

1 A. Yes, ma'am.

2 Q. Is he from the same gangs, on the street
3 level, that Christopher Chavez is from?

4 A. Yes, ma'am.

5 Q. In the conversation that you had, what was
6 it that he said?

7 A. He said that --

8 MR. GRANBERG: Objection, Your Honor. May
9 we approach?

10 THE COURT: You may.

11 (The following proceedings were held at
12 the bench.)

13 MR. GRANBERG: Your Honor, I'm going to
14 object to this next statement. Mr. Rodriguez is
15 about to say -- when I was on the lectern, he said
16 something that I did not hear. I heard a statement
17 about carnals, but he also made an incriminating
18 statement about being killers. That is a statement
19 I didn't hear while I was on the lectern.

20 But to me, that is new information. And I
21 would like to know if that was disclosed recently,
22 if the Government disclosed it.

23 MS. ARMIJO: It was disclosed. I can go
24 get the reports. It was disclosed. And what he was
25 saying -- and I can get the report -- one, it was in

1 response to his questions. And the response was to
2 the effect that his client said that when they go
3 out to the streets, they are both -- he and Boo-Boo
4 are both Barelás Gang members, and that they're
5 respected because they're both killers. And that
6 was -- this is in response to Mr. Rodríguez --

7 THE COURT: That's Christopher Chavez to
8 Mr. Rodríguez?

9 MS. ARMIJO: Yes. Who told that to
10 Boo-Boo, who will testify, and he does have murder
11 convictions. And Mr. Chavez --

12 MR. GRANBERG: Well, Mr. Chavez doesn't
13 have a conviction, Your Honor. But I'd say that
14 doesn't qualify as statement against interests.
15 It's not a co-conspirator statement.

16 THE COURT: But it's a statement of a
17 party opponent.

18 MR. GRANBERG: Oh.

19 THE COURT: So it comes in that way.
20 Sounds like I need to overrule any objection to this
21 statement.

22 (The following proceedings were held in
23 open court.)

24 THE COURT: All right. Ms. Armijo.
25

1 BY MS. ARMIJO:

2 Q. All right. Mr. Rodriguez, you were
3 talking about a conversation that you had with
4 Christopher Chavez in reference to the statement
5 that he made about he and Boo-Boo?

6 A. Right.

7 Q. When was that conversation?

8 A. When we were in Southern New Mexico
9 Correctional Facility. I was down on a motions
10 hearing for the Molina case at the state level.

11 Q. Okay. So that would have been after March
12 2014, but before December of 2015?

13 A. Yes. I think it was around the month of
14 July of 2015.

15 Q. And what was the statement that he made?

16 A. We were in the yard, and we were referring
17 to the stabbing of Robert Esparza, and how the
18 Barelas members took it, and that they were starting
19 to becoming haters of the SNM. And he told me that
20 him and Boo-Boo still went to the neighborhood
21 houses, and none of them said fuck, because they
22 were killers.

23 Q. Now, I believe that the term "carnal" --
24 is that specific to SNM?

25 A. In prison, yes.

1 MS. ARMIJO: And may I have a moment?

2 THE COURT: You may.

3 MS. ARMIJO: Thank you, Your Honor. Pass
4 the witness.

5 THE COURT: Thank you, Ms. Armijo.

6 Mr. Rodriguez, you may step down. Is
7 there any reason Mr. Rodriguez cannot be excused
8 from the proceedings? Ms. Armijo?

9 MS. ARMIJO: No, Your Honor.

10 THE COURT: How about from the defendants?
11 Can he be excused?

12 MR. SINDEL: He can go, as far as I'm
13 concerned.

14 THE COURT: All right. Not hearing any
15 objection, you are excused from the proceedings.

16 THE WITNESS: Thank you, Your Honor.

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3

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5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 5th day of May, 2018.

13

14

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